

LONDON BOROUGH OF BROMLEY
CONTRACT PROCEDURE RULES

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All costs stated in these contract procedure rules are exclusive of VAT, staff costs and fees.

Terms appearing in the definitions appendix are italicised and capitalised.

Further advice on the interpretation of these requirements can be obtained from the following;

Director of Corporate Services

Director of Finance

Head of Procurement

To aid use of these Contract Procedure Rules the following Colour Coding has been used for those associated with various actions and requirements;

Council /Executive	
Portfolio Holder	
Audit Sub Committee	
Chief Executive	
Director of Corporate Services	
Director of Finance /Head of Finance	
Chief Officer	
Heads of Service	
Head of Procurement	
Contract Manager	
Line Manager	
Officer / Initiating Officer	
Values/Amounts	£

<u>Current EU Limits</u>	£
For Works –	4,322,012
For Supplies and Services (other than Light Touch) -	172,514
For the Specific Services Covered by the “Light Touch” Regime –as identified in Schedule 3 of the Public Contract Regulations	625,050
<u>Current UK Limits</u>	
Additional UK Limits – Publication in Contract Finder	25,000 – 172,514
Permissible LBB CPR Set aside Limit	100,000
Current (additional) UK Limits – Local Government Transparency Code – Mandatory Publication of Procurement Information	5,000
Current (additional) UK Limits – Local Government Transparency Code – Mandatory Publication of Expenditure Information	500

A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

INTRODUCTION

These Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act), which form part of the Council's Standing Orders, are intended to promote good *Procurement* practice, establish Value for Money, enhance public accountability and deter corruption. Following the rules is the best defence against allegations that a purchase has been made incorrectly or fraudulently and protects the Council from challenge on the arrangements used for its contracting activity. They reflect the requirements of the 2015 Public Contract Regulations, which set out the statutory requirements for Public Sector Procurement with a value of £25,000 and above and the Local Government Transparency Code 2015. Further descriptions of these requirements, together with associated Policy, Guidance and Practice Notes can be found the Council's Intranet Site in the Procurement element of the "Manager Toolkit".

VFM/Best Value

All **Officers** responsible for *Procurement* activity or disposal must comply with these Contract Procedure Rules. They lay down minimum requirements only; a more thorough procedure may be appropriate for a particular contract.

(For example, if Rule 8.1 would normally require that quotes be obtained, it might be appropriate in particular circumstances to seek additional quotations in writing or tender submissions. Equally, it may not always be appropriate to make use of an exemption under Rule 3 even if one might apply or be granted.)

For the purposes of these rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail and fax transmissions as well as hard copy documents or information issued via a Council E Procurement System.

- Follow the rules if you purchase goods or services or order construction work of any type;
- Take all necessary legal, financial, procurement and professional advice;
- Declare any personal financial interest in a contract. Corruption is a criminal offence;
- Conduct a *Best Value Service* review to establish Value for Money to inform the *Procurement* need;
- Check whether there is an existing *Corporate Contract* or *appropriate framework* you can make use of before undergoing a competitive process;
- Normally allow at least 30 days for submission (more as required, if above EU Threshold) of bids (unless there are good reasons not to);
- Keep bids confidential;
- Complete a written contract and / or Council Purchase Order (using its E Procurement Systems where possible) before the supply, service or works begin (unless otherwise agreed by the **Director of Corporate Services**);
- Identify a contract manager with responsibility for ensuring the contract delivers as intended;
- Keep records of dealings with all tenderers and contractors;

- Assess each contract afterwards to see how well it met and continues to meet the *Procurement* need and *Value for Money* requirements.

In accordance with the *Constitution*, the *Director of Corporate Services*, in agreement with the *Director of Finance* shall have the power to make amendments from time to time to these Contract Procedure Rules *subject to a report being made to the Council within 3 months of any amendment being made*. The *Chief Executive* in agreement with the *Director of Corporate Services*, and the *Director of Finance* shall have the power to amend the titles of the responsible *Officers* identified within these Contract Procedure Rules where these result from changes in organisational structure and/or other amendments to roles and responsibilities of the *Officer* concerned.

The *Head of Procurement* will make the latest version of these Contract Procedure Rules and its associated Guidance Notes available to all officers and members as necessary and be responsible for its circulation and communication

Various Best Practice Guidance Notes and associated processes can be found on the Council's Intranet Site in the Procurement element of the "Manager Toolkit". These complement these Procedural Rules and have been prepared to assist those involved in the *Procurement* process to identify and use best practice. The practices identified should be used by those involved in contracting processes and arrangements unless an alternative course of action has been agreed by the *Head of Procurement in consultation with the Director of Corporate Services* as necessary. In any case the requirements set out in these *Contract Procedural Rules* must be followed unless a general or specific derogation has been agreed by the Council.

SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

1. BASIC PRINCIPLES

1.1 All *Procurement* and disposal procedures must:

- Achieve *Best Value* for public money spent;
- Enable a Value for Money *Procurement* decision based on *Whole Life Costing* and the consideration of *Sustainable Procurement* practice and any associated *Life Cycle Costings*.
- Support Local Business to the maximum extent permitted by law and the duty to demonstrate value for money;
- Be consistent with the highest standards of integrity;
- Ensure fairness in allocating public contracts;
- Comply with all legal requirements;
- Ensure that *Non-Commercial Considerations* do not influence any *Contracting Decision*;
- Support the Council's Corporate and Departmental Aims and Policies;
- Comply with the Council's *Corporate Procurement Strategy*.

1.2 In determining the estimated cost (or value) identified in these Rules the following shall apply:

- **Officers** shall not sub-divide work which could reasonably be treated as a single contract;
- The total estimated value of orders for a given type of goods, services or work should wherever practicable be amalgamated for the purpose of determining *Procurement*, in any case due regard should be given to the "Method for Calculating the Estimated Value of Procurement" identified in Regulation 6 of the *Public Contract Regulations*. This will also apply to *Framework Agreements* or *Draw Down Facilities*;
- If a contract/arrangement is for a period greater than one year then the estimated value of orders to be placed over the full period (including any identified extensions) should be used to determine the appropriate procedure inclusive of any allowance for inflation;
- Where leasing arrangements are used, the total amount payable over the life of the lease shall determine the appropriate procedure;
- Where contracts entail both revenue and capital costs (e.g. acquisitions and support for IT systems) the value of the contract shall be calculated by the aggregation of the total estimated capital cost and the estimated revenue costs calculated as identified above;
- If the lowest quote/tender obtained exceeds the upper limit applicable to the procedure selected, the **Chief Officer** should consider (and record the reason) whether the procedures for the higher category should be applied.

1.3 The formal advice of the **Director of Corporate Services** and the **Director of Finance** (or their **nominees**) must be sought for the following contracts:

- Where the *Total Value* exceeds **£100,000**;
- Those involving leasing arrangements;

- Where it is proposed to use a supplier's own terms;
- Those involving the purchase of application software with a *Total Value* of more than **£50,000**;
- Involve the placement of a *Contract* with another *Public Sector Organisation*, other than through a *Framework Agreement*, authorised as required in these Contract Procedure Rules;
- Arrangements which require the provision of a formal *Gate Report* to be made to Members during any stage of the contracting process;
- Those that are complex in any other way.

1.4 The *Public Contract Regulations* (see Annex B of these *Contract Procedure Rules*) provide for five (5) main processes under which *Works, Services and Supplies*, that fall within their provisions can be placed. These are identified as being the (1) “*Open Procedure*”; the (2) “*Restricted Procedure*”; the (3) “*Competitive Dialogue Procedure*”; (4) “*Competitive Procedure with Negotiation*” and (5) the “*Innovation Partnership Procedure*”. In addition, but only in very limited circumstances, (6) a “*Negotiated Procedure without Prior Publication*” may be used. However, unless the formal Advice of the *Head of Procurement* has been obtained, and the Agreement of the *Director of Corporate Service* and the *Director of Finance* given, only the first two of these options may otherwise be used.

1.5 Provision is also made within the *Regulations* for the placement of those activities identified in Schedule 3 – “*Social and Other Specific Services*” – to which a “*Light Touch Procurement Regime*” may be applied, which differs from those for other *Works Services and Supplies*, and provide for differing arrangements above and below a threshold of **£625,050**, as identified in Section 7 of the *Public Contract Regulations*, which must be followed in the placement of requirements under this provision.

1.6 For all activities, UK specific requirements as set out in Part 4 of the *Public Procurement Regulations*; apply to any arrangements made with a value greater of **£25,000** and above.

Further detailed *Procurement Guidance* on the requirements around the differing contracting arrangements for contract valued at, **£25,000; £50,000; £100,000; £172,514 £500,000; £625,000 and £1,000,000** are provided in the *Best Practice Guidance Notes* which can be found on the Procurement Site in the *Managers Toolkit*.

1.7 Where the estimated value of any intended *Contract*, either singly or in aggregate, or as otherwise identified in the *Public Contract Regulations*, identifies the Contract as being subject to its requirements, the formal advice of the *Head of Procurement* must be obtained, Any required Notice or details issued under these *Regulations* must be agreed with and issued, as required, by the *Head of Procurement*.

1.8 The Council must ensure that it treats all economic operators equally and without discrimination and must act in a transparent and proportionate manner in its contracting arrangements.

1.9 Unless agreed by the **Director of Corporate Service**, following Consultation with the **Head of Procurement**, the Council's Standard Contract and Tender Process Forms (which are embedded in its *E Procurement System* and/or included within the *Procurement Toolkit*), together with the identified methodologies for their assessment and evaluation, must be used.

1.10 The authorisation of matters which have implications for the Council's Pension Fund, which result from any Contracting Decision, must be Authorised by GP&L Committee (or the Council), acting on recommendations made by the Pensions Sub-Committee.

2. OFFICER RESPONSIBILITIES

2.1 Officers

2.1.1 **Officers** responsible for *Procurement* or disposal must comply with these Contract Procedure Rules, *Financial Regulations*, the Officers Code of Conduct and with all UK and Public Contract binding legal requirements. **Officers** must ensure that any *Agents*, *Consultants* and contractual partners acting on their behalf also comply with these requirements.

2.1.2 **Officers** must:

- Have regard to the *Best Practice Guidance* identified above
- Check whether a suitable *Corporate Contract* exists before seeking to let another contract; where a suitable *Corporate Contract* exists, this must be used unless there is a justified and auditable reason not to;
- Keep the records required by Rule 6;
- Take all necessary legal, financial, pensions, procurement and other professional advice;
- Estimate the cost (or value) of the Supply, *Service or Work* required in accordance with Rule 1.2 above.

2.1.3 No *Order* or *Contract* shall be raised or placed unless there is uncommitted budgetary provision (revenue estimate and/or Capital Programme) to meet the estimated cost (or value) unless it relates to matters undertaken (and reported as required) for reasons of *Extreme Urgency*.

2.1.4 The *Estimate Cost (or Value)* calculated as provided for above will be used to determine the arrangements to be followed in seeking and agreeing quotations and tenders for the Council.

2.1.5 When any employee either of the Authority or of a service provider may be affected by any transfer arrangement, **Officers** must ensure that the Transfer of Undertaking (Protection of Employment) (*TUPE*) issues and any Pensions matters are considered and obtain legal and financial advice before proceeding with inviting *Tenders* or *Quotations*.

2.2 Chief Officers

2.2.1 The *Head of Procurement* will maintain a Register of all Contracts with a value of **£200,000** and above. Directorates are required to use the Corporate System to record contracts with an estimated value of **£50,000** and above, in the detail it requires and provide for its update on a quarterly basis.

2.2.2 *Chief Officers* must:

- Ensure that their staff comply with Rule 2.1;
 - Keep registers of:
 - Contracts completed by signature, rather than by the Council's Seal (see Rule 17.3) and arrange their safekeeping on Council premises;
 - Exemptions recorded under Rule 3.2.
-

3. EXEMPTIONS, COLLABORATIVE AND E-PROCUREMENT ARRANGEMENTS

3.1 The Council and its Executive have power to Waive any requirements within these Contract Procedure Rules for specific projects, and any such decision may be a Key Decision.

3.2 Where there is the need to Waive the requirements for Competitive Bids pursuant to rule 13.1 or any other provision of these Contract Procurement Rules because of an unforeseeable emergency involving immediate risk to persons or property or serious disruption to Council services or significant damage or potential damage to the image or reputation of the Council (including circumstances which require a Head of Service to invoke a Business Continuity Plan) a Chief Officer may exercise such Exemption or Waiver subject to the following:

- (i) Where the value of a relevant contract (or proposed contract) exceeds £50,000 the Agreement of the Director of Corporate Services shall be obtained.
- (ii) Where the value of a relevant contract (or proposed contract) exceeds £100,000 the Agreement of the Director of Corporate Services, the Director of Finance and the Agreement of the relevant Portfolio Holder shall be obtained. A report advising on the action taken shall be submitted to the Audit Sub Committee on a bi-annual basis.
- (iii) Where the value of a relevant contract (or proposed contract) exceeds £1 million the Agreement of the Director of Corporate Services, the Director of Finance and the Agreement of the relevant Portfolio Holder shall be obtained. A report advising on the action taken shall be submitted to the next meeting of the Executive and to the Audit Sub Committee on a bi-annual basis.

3.3 All exemptions (as identified above and in Rule 13.1), and the reasons for them, must be completed in writing and recorded. Exemptions shall be signed by the Officer and countersigned by the Director of Finance and Director of Corporate Services. For the purpose this and associate CPR requirements, an exchange of e mails or correspondence via similar electronic mediums can be taken to evidence such action.

3.4 Heads of Finance must hold a record and monitor the use of all exemptions granted.

3.5 Use of Framework Type Arrangements

3.5.1 In seeking to demonstrate Value for Money, the Head of Procurement must be consulted prior to commencing any Procurement process using any Framework Contract, Dynamic Purchasing System arrangement or Catalogue provided by "Crown Commercial Services or a similar Central Purchasing Organisation Contracts, or Joint Contracts with another Authority. The terms and conditions of contract applicable to any such arrangement, including the requirement to undertake competition between providers, must be fully complied with and agreed by the Director of Corporate Services.

3.6 Any purchases proposed to be made via any of the entities identified in CPR3.5.1 above are deemed to comply with these *Contract Procedure Rules* and no exemption is required. However, purchases above the *EU Threshold* must be placed under an *EU compliant process*, unless the consortium has satisfied this requirement already by letting their contract in accordance with the *EU Procedures* on behalf of the authority and other consortium members, however, advice must be sought from the *Head of Procurement as the Council* has a legal responsibility for their proper use of such arrangements and any necessary standstill requirements for an above threshold call off observed.

3.6.1 Before entering into any collaborative procurement arrangements, joint contracts or shared service arrangements with another Public Body or Private Entity, other than those identified in 3.5 above, the *Officer* must consult with the *Director of Finance* and the *Director of Corporate Services*.

3.6.2 All *Contracts* placed under these types of arrangement will be reported as required in these *Contract Procedure Rules*

3.7 Where a *Service* is to be provided by a *Voluntary Sector Organisation* through an external *Service Level Agreement* and providing such *Service(s)* is amongst those covered within the arrangements identified in the “*Light Touch Regime*” provided for under Section 7 of the *Public Procurement Regulations*, the relevant *Chief Officer*, in consultation with the *Director of Corporate Services*, can decide not to obtain competitive tenders or quotations provided that:

- The *Chief Officer* is satisfied that the *Voluntary Sector Organisation* is, or will be able to provide a satisfactory quality of *Service* and that the sums payable under any *Service Level Agreement* entered into represent *Value for Money*;
- The relevant *Head of Finance* keeps a record of all payments made and any *Grants* received under the *Service Level Agreement*;
- The *Service Level Agreement* is time limited and subject to renewal under the arrangements identified in this Rule.

Approvals will be obtained as provided for in Rule 13.1, as appropriate for the estimated total value of the intended arrangement and in all cases any overriding requirements of the *Public Contract Regulations* will be observed.

3.8 E Procurement Arrangements

3.8.1 All *Officers* are required to make use of the Council’s *E Procurement System* (ProContract) when carrying out any Contracting activity which has an estimated value of **£5,000** and above, unless otherwise agreed with the *Head of Procurement*. Where the Council’s *E Procurement System* is not used the relevant *Chief Officer* shall ensure that the information required by CPR 6 is recorded and included within any information required to be published by the Council.

3.8.2 The use of e-procurement technology does not negate the requirement to comply with all elements of these *Contract Procurement Rules*, particularly those relating to completing contracting activity in a fair and transparent way, with any necessary degree of competition and in a way required to establish *Value for Money*.

3.8.3 Unless otherwise agreed by the **Director of Finance** any Purchase Orders placed must make use of and be issued through one of the Council's standard electronic IT systems / processes via *I Proc; Carefirst or Confirm*.

4. RELEVANT CONTRACTS

4.1 All *Relevant Contracts* must comply with these *Contract Procedure Rules*. A *Relevant Contract* is any arrangement made by, or on behalf of, the authority (including schools) for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

- The supply or disposal of goods;
- The hire, rental or lease of goods or equipment;
- The delivery of services, including (but not limited to) those related to;
 - the recruitment of staff;
 - land and property transactions;
 - financial and consultancy services;

4.2 *Relevant Contracts* do not include:

- Contracts of employment which make an individual a direct employee of the authority, or
- Agreements regarding the acquisition, disposal, or transfer of interests in land (for which *Financial Regulations* shall apply). or
- Are otherwise include in Section 10 of the *Public Procurement Regulations 2015*.

However, any such Services must be procured in a way which demonstrably secures *Value for Money* and/or as appropriate, *Best Consideration*.

SECTION 2: COMMON REQUIREMENTS

5. STEPS PRIOR TO PURCHASE

5.1 The **Officer** must review the intended *Procurement* in a manner commensurate with its complexity, risk and value, taking into account any relevant guidance contained in the *Best Practice Guidance Notes and associated processes included in the Procurement Element of the Managers Toolkit*,

- Taking into account the requirements from any relevant Service review;
- Appraising the need for the expenditure and its priority;
- Defining the objectives of the purchase;
- Assessing the risks associated with the purchase / procurement and how to manage them, including those associated with any required consultation, TUPE, Pensions, Insurance and the Tax implications of any contracting arrangements proposed, together with the Social Value Act Legislation;
- *Undertake Preliminary Market Consultation* with the “Market” and Service Providers as appropriate and to the extent provided for in the Public Contract Regulations (Cl.40), providing this does not distort or compromise the contracting process;
- Considering what *Procurement* method is most likely to achieve the *Procurement* objectives, including internal or external sourcing, partnering, packaging strategy and collaborative *procurement* arrangements with another local authority, government departments, statutory undertakers, public service procurement consortium or Central Purchasing Organisations (CPO’s);
- Contract Length; Consider the appropriate time limits allowed for the completion of the tender process and any statutory requirements that may apply;
- Consulting users, staff and other interested parties, as appropriate, about the proposed *procurement* method, contract standards and performance and user satisfaction monitoring;
- Identify and record the reasons for any “*Lotting*” Strategy to be used;
- Drafting the terms and conditions that are to apply to the proposed contract;
- Consider the approach to be taken to performance and contract management and the reporting arrangements needed to ensure the delivery of the required service.
- Ensuring the correctness of any use of member or delegated approval for the expenditure and that the purchase is in accord with the approved policy framework, *Scheme of Delegation* as set out in the *Constitution*;
- If the purchase is a *Key Decision*, all appropriate steps have been taken
- Setting out these matters in writing if the *Total Value* of the purchase exceeds **£50,000**.
- Ensure that for any Contracts involving the Outsourcing (or Insourcing) of any requirements, the necessary Legal, Finance, HR, Pensions, Procurement and IT advice is obtained.

5.2 Where the estimated value of the intended arrangement requires the publication of an *OJEU* and / or *Contract Finder Notice*, the required Procurement Documents must be available at the point of publication.

5.3 Where the estimated value of the intended arrangement is **£500,000** or more the relevant **Portfolio Holder** will be *Formally Consulted* on the intended action and contracting arrangements, having submitted, for consideration, a formal “*Gate Report*”, covering, as appropriate, the matters identified in the Council’s Standard “*Gate Reporting Template*”. Reports produced must identify, after discussion with the *Relevant Officers in Legal, Finance, Human Resources, Procurement and Information Technology*, any service and cost implications arising from the proposals being considered.

5.4 Where the value of the intended arrangement is **£1,000,000** or more the **Executive** will be *Formally Consulted* on the intended action and contracting arrangements, having submitted for consideration a formal “*Gate Report*”, covering as appropriate, the matters identified in the Council’s Standard “*Gate Reporting*” Template..

6. RECORDS

6.1 Information to be maintained under the requirements of the “Local Government Transparency Code 2014”

6.1.1 As provided for within the above Code, for all Invitation to Tender or Requests for Quotations with an estimate value of **£5,000** and above, the relevant **Chief Officer**, shall ensure that the following Information and Procurement Records (including that for staff who are employed via consultancy firms of similar agencies or otherwise work on behalf of the Authority), is maintained and provided for publication as necessary.

At the time of the issue of any Invitation to Tender or Request for Quotation the required information to be provided shall include the following;

- reference Number;
- title;
- description of Work / Goods or Service Required;
- the Start and End Date together with any Review Dates envisaged;
- the Service Area responsible.

At Contract and/or Award, the following additional information shall be provided for publication;

- the suppliers name and details;
- the sum to be paid over the length of the Contract (or the estimated annual spend or budget for the Contract);
- any Value Added Tax that can’t be recovered;
- whether or not the contract was a result of a Request for Quotation or a published Invitation to Tender;
- Whether or not the supplier is a small or medium sized enterprise and/or community sector organisation and if so provide the relevant registration number.

The information identified within CPR 6.1 are mandatory fields for completion within the Council’s E Procurement System (ProContract). The System will automatically publish the

required details and the use of the Council's E Procurement System, therefore, negates the need for a separate record of this information to be maintained by the relevant Chief Officer. The published E Procurement System Record will be considered to be the Council's Contract Register for activities valued between £5,000 and £50,000. Check what Confirm and Carefirst set out

6.2 Where the information is not held on the Council's E Procurement System and for Contracts with an estimated value less than £50,000, the following contractual records must also be kept by the relevant Chief Officer:

- Invitations to quote and *Quotations*;
- A record:
 - of any exemptions and the reasons for them,
 - of the reason if the lowest price is not accepted,
- Written records of communications with the successful contractor or an electronic record if a written record of the transaction would normally not be produced.

6.2 Where the *Total Value* exceeds £50,000 the Officer must also record:

- The method for obtaining *Bids* (see Rule 8.1);
- Details of any required Notice and/or advert placed;
- Any *Contracting Decision* and the reasons for it;
- Any exemption under Rule 3 together with the reasons for it;
- The *Award Criteria* in descending order of importance;
- *Tender* documents sent to and received from *Candidates*;
- Pre-tender market research;
- Changes to the contracting timetable
- Clarification and post-tender negotiation (to include minutes of meetings);
- The contract documents;
- Post-contract evaluation and monitoring;
- Communications with *Candidates* and with the successful contractor throughout the period of the contract.

6.3 Records required by this rule must be kept for six years (12 years if the contract is under seal) after the end of the Contract. (However, written documents which relate to unsuccessful *Candidates* may be microfilmed or electronically scanned or stored by some other suitable method or disposed of after 12 months from award of contract), provided there is no dispute about the award. Documents may then be disposed of as identified in the Council's *Financial Regulations*

6.4 Where the *Total Value* exceeds £50,000 the Directorate or Department concerned shall maintain a record of the contract placed in the *Service Contract Register*, using the corporate system, unless otherwise agreed by the Head of Procurement.

6.5 Where the *Total Value* exceeds £200,000 the Head of Procurement will maintain a record of the contract placed, using the information provided under CPR 6.4, to compile the *Corporate Contract Register*.

7. ADVERTISING, APPROVED LISTS AND FRAMEWORK AGREEMENTS – Restrictions on Use

7.1.1 The Public Contract Regulations and their accompanying guidance limit the opportunity to make use of “Approved Lists” for requirements with an Estimated Value above **£100,000**, without the opportunity also being advertised in Contracts Finder and allowing any who respond to be considered in the tender process.

7.1.2 Where the Estimated Value of an Opportunity is lower than the EU Threshold for Supplies and Services the Authority is also prevented from making use of any Pre-Qualification process and is required to invite all those expressing an interest, who pass any Suitability Criteria set, to Quote or Tender for the Opportunity identified.

7.1.3 As a result Approved Lists, such as *Constructionline* or *TrustMark*, should only be used in appropriate circumstances, as agreed in discussion with the *Head of Procurement*. For opportunities with an Estimated Value below **£100,000** the arrangements identified in the Council’s “**Local Rules - OK**” procedure (as included in the Appendices to these Rules), may also be used, unless there are operational considerations which prevent their use.

7.1.4 Where the Councils E Procurement system is not used to manage the tender process the *Chief Officer* will be responsible for ensuring the issue of any Contract Notices and Advertisements, including those for Contract Finder, required.

7.2 Identifying and Assessing Potential Candidates

7.2 .1 *Officers* shall ensure that, where proposed contracts, irrespective of their *Total Value*, might be of interest to potential *Candidates* located in other member states of the EU or as otherwise required within the Public Contracts Regulations, that a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements / notices may be placed include:

- The Council’s website;
- Portal websites specifically created for contract advertisements;
- National official journals; or
- The Official Journal of the European Union (OJEU) / Tenders Electronic Daily (TED) (even if there is no requirement within the *EU Procedure*);
- Contracts Finder

However, the contract opportunity must always be published in Contract Finder if any type of advertisement is to be made.

7.2.2 Where the estimated value of the Contract is greater than **£100,000** The *Officer* shall consult with the *Head of Procurement* on the detailed requirements of Part 4 of the *Public Contract Regulation* and their requirement for the envisaged contracting arrangement (see Annex B of these Contract Procedural Rules).

7.2.3 **Officers** are responsible for ensuring that all *Candidates* for a *Relevant Contract* are suitably assessed. The assessment process, shall establish that the potential *Candidates* have sound:

- economic and financial standing;
- technical ability and capacity;

to fulfil the stated requirements of the authority. However, where the estimated value of the contract is below that identified in CPR 7.1.2 the “*Suitability Assessment*” shall be incorporated into the tender process and documentation as part of the Invitation to Tender.

7.2.4 This shall be achieved in respect of proposed contracts by selecting firms from:

- *Approved Lists* of providers, maintained by the authority or on its behalf or
- Shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement, placed on Contract Finder in the first instance.

In the case of *Contracts* with an *estimated value* above the **relevant EU Thresholds** the authority must only consider candidates who respond to the *OJEU Contract Notice*.

7.2.5 Public advertisements issued in respect of Rule 7.2.4 above shall reflect the potential degree of interest from *Candidates* located within other member states of the EU.

7.3 Approved Lists

7.3.1 *Approved Lists* may be used where recurrent transactions of a similar type are likely but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise. *Approved Lists* cannot be used where the *Public Contract Procedures* apply.

7.3.2 **Chief Officers** may draw up in consultation with the **Head of Procurement**;

- *Approved Lists* of persons ready to perform contracts to supply goods or services of particular types including without limitation on the basis of agreed contract terms:
- Criteria for establishing the suitability of those being invited to participate from the lists.

7.3.3 No person may be entered on an *Approved List* until there has been an adequate investigation into both their financial and their technical ability to perform the contract, unless such matters will be investigated each time bids are invited from that list.

7.3.4 All *Approved Lists* shall be maintained in an open, fair and transparent manner, be open to public inspection and be compiled and operated in compliance with the relevant Public Contract Regulations.

7.3.5 A register of pre-qualified contractors and *Consultants* maintained by or on behalf of Central or Local Government, a Central Purchasing Organisation or similar body will be deemed to be an *Approved List* for the purpose of these contract procedure rules and shall not be subject to the requirements of Rules 7.2 to 7.3.6 inclusive.

7.3.6 Any *Approved List* compiled and operated by the Council will reflect the overarching basic principles identified in Rule 1.1.

7.4 Framework Agreements, Dynamic Purchasing Systems and Electronic Catalogues

7.4.1 The term of a *Framework Agreement*, unless otherwise agreed, by the **Director of Corporate Services** and **Director of Finance**, must not exceed four years

7.4.2 In general terms Contracts based on a *Framework Agreements* may be awarded by either:

- Applying the terms laid down in the *Framework Agreement* (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or
- Where the terms laid down in the *Framework Agreement* are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:
 - inviting the organisations within the *Framework Agreement* that are capable of executing the subject of the contract to submit written *Tenders*
 - fixing a time limit which is sufficiently long to allow *Tenders* for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract
 - awarding each contract to the tenderer who has submitted the best *Tender* on the basis of the *Award Criteria* set out in the specifications of the *Framework Agreement*.

However, the specific requirement on the operation of Framework agreements, identified below, for opportunities valued above and below the stated thresholds must be followed.

7.4.3 Where a Framework agreement is intended to be used for a Contract with an Estimated Value **above** the relevant EU Thresholds it must be operated as provided for in Part 2 / Section 4/ 334 of the Public Contract Regulations (see Annex B of these Contract Procedure Rules).

7.4.4 Where a Framework agreement is intended to be used for a Contract with an Estimated Value **below** the EU Thresholds it must be operated as provided for in Part 4 /Section 106 of the Public Contract Regulations (see Annex B of these Contract Procedure Rules).

7.4.5 In a similar fashion use may be made of Dynamic Purchasing Systems and Electronic Catalogues providing they are operated in accordance with the arrangements identified in 7.4.4 above.

SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

8. COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The **Officer** must calculate the *Estimated Cost (or Value)*.

The following procedures apply where there are no other procedures, which take precedence. Other procedures may include Regulatory Requirements, agency agreements with Government or other Public Bodies. If in doubt, **Officers** must seek the advice of the **Director of Corporate Services**.

It is a requirement of the Public Contracts Regulations that, for both above and below EU threshold activity all contract documentation should be available prior to the issue of any required Notice or posting to “Contract Finder”.

To encourage SME engagement in the tender process and unless there is good reason not to do so, consideration should be given (and a reason not to do so recorded) to divide the opportunity in to “Lots”, however the total value of all such “Lots” will determine the value to be taken in to account when determining the Procurement route to be taken.

Under Regulatory Powers introduced by the UK Government, Prior Qualification Questionnaires are only permitted to be used for contracting arrangements with an estimated value at or above the EU Threshold for Services and Supplies. The Content of the Questionnaire to be use is prescribed by the legislation and any deviation from it are required to be reported to Crown Commercial Services.

Below the value identified above a “Suitability” Assessment Process, which is relevant and proportionate to the subject matter of the intended procurement, included within an open tender process, must be used unless other arrangements around these requirements, have been specifically allowed for by the Secretary of State.

8.1 Procurement – Competition Requirements

8.1.1 Where the *Estimated Cost or Value* for a purchase is within the limits identified in the in the first column below, the *Award Procedure* in the second column must be followed. *Shortlisting* shall be done by the persons specified in the third column.

<i>Estimated Cost (or Value)</i>	Sourcing Procedure	Short Listing By
Up to £5,000 (£25,000 for Consultancy Services)	One oral <i>Quotation</i> (confirmed in writing where the <i>Estimated Cost or Value</i> exceeds £1,000) using the Using the Council’s “Local Rules” Process where possible and other Approved Lists where Authorised	Officer
£5,000 - up to £25,000	3 written <i>Quotations</i> using the Council’s “Local Rules” Process where possible and other lists as Agreed with the Head of Procurement .	Officer

<p>£25,000 – up to £100,000</p>	<p>Request for Quotation using the Council’s “Local Rules” Process where possible and other lists as Agreed with the Head of Procurement., to at least 3 and no more than 6 Candidates</p> <p>If for whatever reason, a Request for Quotation is made using a Public Advertisement, the opportunity must also be included on “Contract Finder”, with all Suitable Candidates responding, being considered.</p> <p>In both cases use must be made of the Council’s E Procurement System, unless otherwise agreed by the Head of Procurement.</p>	<p>Officer and Line Manager</p>
<p>£100,000 up to the EU Threshold for Supplies and Services (applies to all activities)</p>	<p><i>Invitation to Tender</i> making use of a Public Advertisement. The opportunity must also be included on “Contract Finder”, with all Suitable Candidates responding, being considered. No Prior Qualification process is permitted</p> <p>Use must be made of the Council’s E Procurement System, unless otherwise agreed by the Head of Procurement.</p>	<p>Officer, HOS and Head of Procurement Head of Finance</p>
<p>Above EU Threshold for Supplies and Services (applies to all activities) and / or £500,000</p>	<p><i>The appropriate EU / Public Contract Procedure</i> or, where this does not apply, <i>Invitation to Tender</i> by an Appropriate Notice / Advertisement to at least five and no more than eight Candidate</p>	<p>As above + in Consultation with the Director of Corporate Services and Customer Services and Director of Finance – see Rules 7.2.3 & 8.1.4</p>
<p><i>Note – Where an intended arrangement is for the provision of Consultancy Type Service, including those for Construction related activity and the estimated value of the intended arrangement is above £50,000 the relevant Portfolio Holder will be Formally Consulted on the intended action and contracting arrangements to be used.</i></p>		

8.1.2 Where it can be demonstrated that there are insufficient suitably qualified *Candidates* to meet the competition requirement, all suitably qualified *Candidates* must be invited.

8.1.3 An **Officer** must not enter into separate contracts nor select a method of calculating the *Total Value* in order to minimise the application of these Contract Procedure Rules or the *Public Contract Regulations*.

8.1.4 Where a Public Contract Regulations applies, the **Officer** shall discuss with the **Head of Procurement** and Consult with the **Director of Corporate Services** and **Director of Finance** to determine the arrangements to be used for the completion of the *Procurement*. In any case

the Final Contract Documentation shall be available for viewing, via the internet, from the date of publication of any required Contract Notice, unless otherwise agreed.

8.2 Assets for Disposal

8.2.1 Assets for disposal must be sent to public auction except where better *Value for Money* is likely to be obtained by inviting *Quotations* and *Tenders*. (These may be invited by advertising on the Council's internet site.) In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the relevant **Head of Finance**. (see also Financial Regulation / Procedure 19)

8.3 Providing Services to External Purchasers and other Public Sector Organisations

8.3.1 The **Director of Corporate Services** and **Director of Finance** must be *Consulted* where contracts to work for organisations other than the authority are contemplated.

8.4 Collaborative and Partnership Arrangements

8.4.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these *Contract Procedure Rules*. If in doubt, **Officers** must seek the advice of the **Director of Corporate Services** and **Head of Procurement**.

8.5 The Appointment of Consultants to Provide Services

8.5.1 Consultant architects, engineers, surveyors and other professional *Consultants* shall be selected and commissions awarded in accordance with the procedures detailed within these Contract Procedure Rules as outlined above

8.5.2 The engagement of a *Consultant* shall follow the preparation of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment.

8.5.3 Records of consultancy appointments shall be kept in accordance with Rule 6.

8.5.4 *Consultants* shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the relevant **Head of Finance** for the periods specified in the relevant agreement.

9. PRELIMINARY MARKET CONSULTATION

9.1 The **Officer** responsible for the purchase:

- May consult potential suppliers prior to the issue of the *Invitation to Tender* in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential *Candidate*; but

- Must not seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential *Candidates* or distort competition; and
 - Must seek advice from the *Head of Procurement* where the tender under consideration has an estimated value greater than the relevant EU Threshold and observe the requirements of the Public Contract Regulations Cl.40/41 in the approach taken on such consultation and any subsequent involvement, by those consulted in the tender process.
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10. TECHNICAL SPECIFICATIONS, STANDARDS, LABELS, SELECTION, SUITABILITY AND AWARD CRITERIA

10.1 The *Officer* must ascertain what are the relevant British, European or international standards which apply to the subject matter of the contract. The *Officer* must include those standards which are necessary properly to describe the required quality. The *Director of Corporate Services* must be *Consulted* if it is proposed to use standards other than European Standards.

10.2 Where the use of a specific Label is to be used to identify a particular technical requirement others proposed as being equivalent must be considered

10.3 In any case the requirements of the above Rules 10.1 and 10.2 shall be operated as required by Clauses 42 – 44 of the Public Contracts Regulations.

10.4 *Selection Criteria* used, as further identified in Cl.68 of the *Public Contract Regulations*, must be related and proportionate to the subject matter of the contract and may consider factors such as, suitability, economic and financial standing and technical, financial and professional ability. Statutory Guidance on the Standard PQQ Documentation to be used and the approach to its assessment is stipulated by Crown Commercial Services and where such arrangements are used the *Officers* must seek the advice of the *Director of Corporate Services* and *Head of Procurement*, if they wish to depart from the use of the Standard arrangements identified in the Councils *Procurement Practice Notes* and *Model Documents*.

10.5 Where the Estimated Value of any procurement process is below the EU value identified for Supplies and Services, a selection process may not be used and an Open Tender Process. Based on a two stage “Suitability” evaluation and tender submission, by all those found to be suitable, must be followed.

10.6 2 The *Officer* must define *Award Criteria* that are appropriate to the purchase, linked to the subject matter of the contract and designed to secure an outcome giving *Value for Money* for the authority. The basic criteria shall be:

- ‘most economically advantageous’ (“MEAT”), where considerations other than price also apply; or
- ‘lowest price’ where payment is to be made by the authority;
- ‘highest price’ if payment is to be received;

Where “MEAT” criterion are adopted, it must be further defined by reference to sub-criteria, which may refer only to relevant considerations. These may, for example, include price /cost of service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters. The criteria used, and where possible the weighting attributed to them, shall be included in the Notice and or tender documentation as appropriate.

10.5 Award Criteria shall not have the effect of conferring an unrestricted freedom of choice on the Authority and shall ensure the possibility of effective competition.

10.6 Unless there are valid and justified reasons to do otherwise, the Council’s preferred method of determining *Value for Money* in its *Procurement* arrangements is by the consideration of the *Whole Life Cost* and / or the *Life Cycle Costing* of the intended arrangement aligned with its *Sustainable Procurement* practice.

10.7 *Award Criteria* must not include:

- *Non-commercial Considerations*;
- Matters, which discriminate against suppliers from the *European Economic Area* or signatories to other *Government Procurement Agreement*.

11. INVITATIONS TO TENDER/QUOTATIONS

11.1 The *Invitation to Tender* shall state that no *Tender* will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*. No *Tender* delivered in contravention of this clause shall be considered, unless agreed by The **Director of Corporate Services**.

11.2 All *Invitations to Tender* shall include the following:

(a) A specification that describes the authority’s requirements in sufficient detail to enable the submission of competitive offers.

(b) A requirement for tenderers to declare that the *Tender* content, price or any other figure or particulars concerning the *Tender* have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).

(c) A requirement for tenderers to complete fully and sign all *Tender Documents* including a form of *Tender* and certificates relating to canvassing and non-collusion.

(d) Notification that *Tenders* are submitted to the council on the basis that they are compiled at the tenderer’s expense.

(e) A description of the *Award Procedure* and, unless defined in a prior advertisement, a definition of the *Award Criteria* in objective terms and if possible in descending order of importance.

(f) Notification that no *Tender* will be considered unless it has been submitted using the Council's E procurement System or, where agreed otherwise, as identified in (g) below, is enclosed in a sealed envelope or container which bears the word '*Tender*' followed by the subject to which it relates, but no other name or mark indicating the sender.

(g) A stipulation that any *Tenders* submitted by fax or other electronic means shall not be considered, unless specifically provided for in the Invitation to Tender and with the prior agreement of the *Director of Corporate Services* and *Director of Finance* as to the process to be used. (see also Rule 14.3)

(h) The method by which any arithmetical errors discovered in the submitted *Tenders* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender*, or vice versa. (See also Rule 16.4)

11.3 All *Invitations to Tender* or *Quotations* must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 17).

11.4 The *Invitation to Tender* or *Quotation* must state that the Council is not bound to accept any *Quotation* or *Tender* and may extend the closing date where appropriate.

11.5 All *Candidates* invited to *Tender* or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

11.6 It is a requirement of the of the Public Contract Regulations 2015, that all relevant Contract documentation and information is available at the point of any required Notice (either in OJEU or Contract Finder) or at Tender, should a Notice not be required.

12. SHORTLISTING

12.1 Where permissible any *Shortlisting* must have regard to the financial and technical standards required to the contract; and be relevant and proportionate to the intended Procurement and be consistent with the selection criteria outlined in the Public Contract Regulation cl.60(9). Specific UK Government Rules apply to UK procurement activity which legislates for different requirements and treatment for all types of contracting arrangement valued between £25,000; £100,000 and the EU Threshold for Supplies and Services. These are in addition to those identified for above EU Threshold activity. The advice of the *Head of Procurement* should be sought before commencing any *Shortlisting* process..

12.2 The *Officers* responsible for *Shortlisting* are specified in Rule 8.1.1.

12.3 Where *Approved Lists* are used, *Shortlisting* may be done by the *Officer* in accordance with the *Shortlisting* criteria drawn up when the *Approved List* was compiled (see Rule 7.2.2).

However, where the *Public Contract Regulations* applies, *Approved Lists* must not be used (where outside of any local dispensation), and requirements must be placed via an OJEU or Contract Finder Notice as appropriate (see Rule 7).

13. EXEMPTIONS TO THE NEED FOR COMPETITIVE TENDER

13.1 A decision to negotiate with one or more candidates on any arrangements required within the *Procurement* process shall not be made except in compliance with the following and any Public Contract Regulations (see also Rule 3). Note - For the purpose of this Rule the establishment of a *Service Level Agreement* is treated as being a negotiated arrangement;

Estimated Value)	Cost(or	Authorisation Requirement
£5,000 - £50,000		Chief Officer Agreement
£50,000 - up to £100,000		Chief Officer in agreement with <i>Director of Corporate Services</i> and <i>Director of Finance</i> with a report of the use made of this exemption being made to <i>Audit Sub committee</i> on a bi-annual basis.
£100,000 – up to £1,000,000		Chief Officer in agreement with <i>Director of Corporate Services</i> and <i>Director of Finance</i> and following Approval of the relevant <i>Portfolio Holder</i> , with a report of the use made of this exemption being made to <i>Audit Sub committee</i> on a bi-annual basis.
£1,000,000 and above		Chief Officer in agreement with <i>Director of Corporate Services</i> and <i>Director of Finance</i> and the approval of the <i>Executive or the Council</i> as appropriate.

13.2 The Officer concerned will need to ensure that the records necessary to justify the intended action are maintained and issued where necessary, for above and below EU Threshold activity as set out in the Public Contracts Regulations.

13.3 In determining the Value (and any Aggregate Values) for a particular requirement, together with those used to calculate the values of any modifications and /or extensions proposed to existing arrangements, care must be taken to value such activity using the approaches identified in the various parts of the Public Contract Regulations. In general terms it is the Value of an activity across the Council, and not of a contract in isolation which determines its treatment within the Public Contract Regulations.

13.4 Subject to the satisfactory completion of any required Contract Monitoring Report (see CPR 23), and where the Report produced as required by CPR 5 provides for a discretionary Extension of the Contract for an additional period of time. Providing the Authorising Committee have indicated their agreement at the point of the CPR 5 Report, without the need for further referral, then the relevant Chief Officer may, in agreement with the *Director of Corporate Services* and *Director of Finance*, and any other person specified in the authorisation and in Consultation with the Portfolio Holder, make use of this permissible extension providing it is notified to the Audit Sub committee, as part of the Bi Annual Report produced and identified in this CPR.

13.5 Chief Officers with Social Care responsibilities have specific exemptions provided to them under the Council’s *Scheme of Delegation* for certain contracting arrangements

14. SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS

14.1 Candidates must be given a reasonable and proportionate amount of time in which to prepare and submit a proper *Quotation* or *Tender*, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of *Tenders*. The *EU Procedure* lays down specific time periods which must be observed.

14.2 All *Quotations* or *Tenders* must be returned in compliance with the following requirements;

Estimated Cost(or Value)	Receipt Procedure	Opening Procedure
Up to £5,000	Opened on arrival	By Officer
£5,000 – up to £100,000	Held in the custody of the Relevant Chief Officer or their representative until the time appointed for their opening	Opened and recorded by two Officers nominated by the Relevant Chief Officer, Initiating Officer may also attend.
£100,000 and above	Held in the custody of the Director of Corporate Services or their representative until the time appointed for their opening	Opened and recorded by two officers nominated by the Director of Corporate Services, (Initiating Officer may also attend) and returned by them to the Initiating Officer.

The Council’s preferred method of issuing an *Invitation to Tender* or *Requests for Quotation* and receiving any responses made is via the use of its E Procurement System, which should be used for all such activity, unless otherwise agreed by the Head of Procurement. Where a paper based process is agreed to be used it must follow the following requirements.

In all cases the tender instructions or notice shall state that no *Quotation* or *Tender* shall be received by the Council except in a plain sealed envelope/package which shall bear the words “Tender/Quotation” (as appropriate) followed by the subject matter to which it relates, but shall not bear any name or mark which would identify the sender. They must also make it clear to whom and where the completed tender should be returned, as provided for in the above detail.

14.3 The Director of Corporate Services must approve any receipt of tenders by Fax or other electronic means (e.g. email), which should otherwise be rejected

14.3 Where the Council is utilising an electronic reverse auction as a *Procurement* procedure enabling suppliers/providers to adjust their tender price in the light of information from the tender prices submitted by competing suppliers/providers, then alterations will be accepted as permitted by the auction process. No *Procurement* shall take place by an electronic reverse auction unless the **Director of Finance** agrees that such process is appropriate for the *Procurement* in question and the e-auction is completed in line with methods agreed by the **Head of Procurement**.

14.4 The relevant **Officer** as identified in Rule 14.2 shall be responsible for the safekeeping of *Tenders* until the appointed time of opening and:

- Suitably recording, the date and precise time it was received;
- Securely storing on receipt to guard against amendment of their contents;
- Recording immediately on receipt in the *Tender Record Log*.

14.5 Upon opening, a summary of the main terms of each *Tender* (i.e. significant issues that are unique to each *Tender* submission and were not stated in the *Tender* invitation documents such as *Tender* sum, construction period, etc) must be recorded in the *Tender Record Log*. The summary must be initialled (or tagged as actioned on any E Procurement System used) on behalf of the relevant **Officer** as identified in Rule 14.2.

14.6 In the event that a tender that does not comply with the Council's requirement, as set out in the tender invitation e.g. is qualified, arrive late and /or after other tenders had been opened, is received, with the circumstances recorded on the *Tender Record Log* and any evidence of the relevant events retained (i.e. envelop, packaging, receipt documentation etc.). **Chief Officers** may, however, seek the agreement of the **Director of Corporate Services** and the **Director of Finance** to relax these requirements in appropriate circumstances. Any such relaxation shall be identified when seeking any necessary authorities required before the acceptance of a tender and will include consideration of any reasonable endeavour made by a tenderer to properly submit their tender by the appointed time, and any opportunity presented that might allow the amendment or change of details submitted so as to offer the opportunity for an unfair advantage to be taken.

14.7 For *Tenders* with an estimated *Value* of **£50,000** or above, where fewer than the minimum number of *Tenders* required have been received the **Director of Corporate Services** and the **Director of Finance** shall be *Consulted*, prior to any award decision, on any steps considered necessary to establish and maintain the adequacy of the tender process. Where the *Tender* has an estimated *Value* of less than **£50,000** the relevant **Chief Officer** may decide, on a Value for Money basis, the need for any additional actions required to maintain the adequacy of the tender process.

15. CLARIFICATION PROCEDURES AND ANY PERMISSABLE POST-TENDER NEGOTIATION

15.1 Providing clarification of an *Invitation to Tender* to potential or actual *Candidates* or seeking clarification of a *Tender*, whether in writing or by way of a meeting, is permitted. However, discussions with tenderers after submission of a *Tender* and before the award of a

contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. In particular, they must not be conducted in an *EU Procedure* where this might distort competition, especially with regard to price.

15.2 Where information or documentation submitted at tender is, or appears to be, incomplete or erroneous, or where specific documents are missing, consideration as to allowing the tenderer to submit, supplement, clarify or complete the relevant documentation or document (within an appropriate time limit) shall be made in consultation with the *Head of Procurement* and with the agreement of the *Director of Finance* and the *Director of Corporate Services*.

15.3 If post-tender negotiations are permissible and necessary after a single-stage *Tender* or after the second stage of a two-stage *Tender*, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best *Tender* and after all unsuccessful *Candidates* have been informed. During negotiations tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in the *Tender* documents. *Officers* appointed by the *Chief Officer* to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

15.4 Post-tender negotiation must only be conducted in accordance with the guidance issued by the *Director of Finance* in consultation with the *Director of Corporate Services* who, together with the *Head of Procurement*, must be *Consulted* wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two *Officers*, one of whom must be from a division independent to that leading the negotiations.

15.5 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered unless the *Director of Corporate Services* and the *Director of Finance* agree to an alternative course of action.

16. EVALUATION, AWARD OF CONTRACT AND DEBRIEFING CANDIDATES

16.1 Apart from the debriefing required or permitted by these Contract Procedure Rules, the confidentiality of *Quotations*, *Tenders* and the identity of *Candidates* must be preserved at all times and information about one *Candidate's* response must not be given to another *Candidate*. Any processes used must ensure compliance with the principles of transparency and the equal treatment of those submitting tenders.

16.2 Contracts must be evaluated and awarded in accordance with the stated *Award Criteria*, which must be linked to the subject matter of the *Procurement* and be contract specific. During this process, *Officers* shall ensure that submitted *Tender* prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.

16.3 Care should be taken in the evaluation process, where it is anticipated there may be subsequent changes to Council requirements, to ensure the impact of a reduction or increase in the volumes of expected activity are considered

16.4 The arithmetic in compliant *Tenders* must be checked. If arithmetical errors are found they should be notified to the tenderer, and dealt with in the following manner:

- The tender(s) should be given details of the error(s) found during the examination of the tender and shall be given an opportunity of confirming without amendment, or withdrawing the tender; or
- Amending the tender to correct any genuine arithmetic error(s) apparent on the face of the document, providing that in this case, apart from the these genuine errors no other adjustment, revision or qualification is permitted.

Such amendments should only be made in circumstances agreed with the **Director of Corporate Services**.

16.5 Unless otherwise agreed by the **Head of Procurement**, the Council's standard approach to Tender Evaluation, as contained in the CIPFA "Standing Guide to the Commissioning of Local Authority Works and Services, shall be used for the evaluation of all contracts with a value of **£25,000** and above.

16.6 **Officers** may accept, within their relevant financial limit, delegated authority and providing the stipulated degree of separation of duties is maintained, Quotations and *Tenders* received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these Contract Procedure Rules and, in respect of proposed contracts that are expected to exceed **£500,000**, the approval of the relevant **Portfolio Holder** has been secured. The awarding of contracts that are expected to exceed **£1,000,000** shall be approved by the **Executive or the Council**, the responsible **Officers** having submitted for consideration a formal "Gate Report", covering, as appropriate, the matters identified in the Council's Standard "Gate Reporting Template for consideration at Award of Contract

16.7. Where the actual value of any intended contract is greater than that provided for in the original budgetary provision, or any tolerance provided for in the Council's *Capital Programme Procedures and/or Financial Regulations* the tender should not be accepted without seeking the advice of the **Director of Finance** and obtaining any necessary authorisations for increased budgetary provision.

16.8 Where the intended contract has a value in excess of **£200,000** it should be completed under seal as provided for in Section 17 of these Rules.

16.9 Where the Council is in receipt of income or net benefit under a contract it should be signed as a Deed.

16.10 In all cases the tender evaluation must be carried out as provided for in the Invitation to tender unless otherwise agreed with the **Director of Corporate Services** following *Consultation* with the **Head of Procurement**.

16.11 Where the *Total Value* is over **£100,000**, the **Officer** must notify all *Candidates* simultaneously and as soon as possible of the intention to award the contract to the successful *Candidate*. The **Officer** must provide unsuccessful *Candidates* with a period of at least ten days in which to challenge the decision before the **Officer** awards the contract.

If the decision is challenged by an unsuccessful *Candidate* then the *Officer* shall not award the contract and shall immediately seek the advice of the *Director of Corporate Services*.

16.12 The *Officer* shall debrief in writing all those *Candidates* who submitted a bid about the characteristics and relative advantages of the leading bidder. No information, other than the following, should be given without taking the advice of the *Director of Corporate Services*:

- How the *Award Criteria* were applied;
- The prices or range of prices submitted, in either case not correlated to *Candidates'* names;
- The names of *Candidates* where there were three or more *Candidates*.

16.13 If a *Candidate* requests in writing the reasons for a *Contracting Decision*, the *Officer* must give the reasons in writing within 15 days of the request (or 10 Days were an electronic medium is used). If requested, the *Officer* may also give the debriefing information at Rule 15.6 above to *Candidates* who were deselected in a pre-tender *Shortlisting* process.

16.14 Where the award of the contract is a *Key Decision* any award must take account and observe the Council's *Call in Procedure* (see Annex C)

16.15 Mandatory Standstill Period – 10 Days

16.15.1. Where a contract decision is required for a tender process completed under the Public Contract Regulation (and unless otherwise provided for), the Council must inform any *candidate* that has submitted an offer, has applied to be amongst those selected to tender for or negotiate the contract, or any candidate who has applied to be party to a *framework agreement*, of its decision in relation to the award of the contract or the conclusion of (setting up) a *framework agreement*.

16.14.2 The process adopted and information sent must be completed in compliance with the requirements set out in Clause 86 of the Public Procurement Regulations and identify, on an individual basis the "...characteristics and relative advantages..." of the successful tenderer(s) and those not successful.

16.14.3. Unless agreed otherwise with the *Head of Procurement*, the required Notice must be sent using the Council's E Procurement System and the recipient must be given until midnight on the end of the 10th day from issue (or if this is a weekend or bank holiday the end of the next working day?), to respond before it can finalise the process and enter in to a contracting arrangement.

16.15. Call in Period

While the periods may run concurrently, officers need also to ensure their compliance with the Council's "*Call In*" requirements as identified in part 4 of the Council's Constitution (summarised in Annex D).

16.16 End of Standstill and Call in Period

At the satisfactory completion of the time periods identified in 16.14 & 16.15 the **Head of Service** shall notify the **Director of Corporate Services** and the **Head of Procurement** of their end to enable the issue of the necessary Contract Documentation and Award Notices.

16.17 Action on the Receipt of Any Challenge

In the event of any letter being received by the Council which indicates a *Challenge* to any element of the Tender or Award Process or if any correspondence is received from the *"Mystery Shopper Team" at Crown Commercial*, no further actions should be taken on the Tender or Award Process until the **Director of Corporate Services** and the **Head of Procurement** have been Consulted and a response agreed. The Council requires that a review of the tender process is completed by the Officers identified above if any formal *challenge* to the tender arrangements is made.

SECTION 4: CONTRACT AND OTHER FORMALITIES

17. CONTRACT DOCUMENTS

17.1 Relevant Contracts

17.1.1 All *Relevant Contracts* that exceed **£100,000** shall be in writing.

17.1.2 All *Relevant Contracts*, irrespective of value, shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done);
- The provisions for payment (i.e. the price to be paid and when);
- The time, or times, within which the contract is to be performed;
- The provisions for the council to terminate the contract.

17.1.3 Unless otherwise agreed by the **Director of Finance**, the *Council's Official Order Form*, as provided for in *Financial Regulation 5*, shall be used **Director of Corporate Services** shall also agree the use of any standard terms and conditions issued by a relevant professional body which it is proposed to use.

17.1.4 In addition, every *Relevant Contract* of purchase over **£50,000** must be completed under Legal Guidance and state clearly as a minimum:

- That the contractor may not assign or sub-contract without prior written consent;
- Any insurance requirements;
- Health and safety requirements;
- Sustainability requirements;
- Ombudsman requirements;
- Data protection requirements, if relevant;
- That charter standards are to be met if relevant;
- Race relations requirements;
- Disability Discrimination Act requirements;
- Freedom of Information Act requirements;
- Payment requirements within 30 Days to the Contractor and their Sub Contractor to the same effect.
- Variation Clauses which fully reflect the Councils potential requirements and the implications of the Public Procurement Regulations (Clause 72) and any valid associated Guidance
- Where *Agents* are used to let contracts that *Agents* must comply with the Council's contract procedure rules;
- A right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant.
- Include the Council's standard requirements with regard to "*Whistle Blowing*"
- Any appropriate measures required to support the Council in the event of a Civil Emergency being declared or the Council's Business Continuity Plan invoked.

17.1.5 Where it is envisaged that there may be a need to a *Variation* to the Council's requirements during the period of a contract, appropriate conditions should be included allowing for the valuation of any subsequent changes.

17.2 Contract Formalities

17.2.1 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the **Director of Corporate Services**.

17.2.2 The **Officer** responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

17.2.3 Prior to the commencement of the contract (if not provided as part of the tender process) the **Officer** responsible shall request that the Main Contractor provides the names of their Sub Contractors and their representative. The Main Contractor will also be required to advise the Council of any changes in this information during the term of the contract.

17.3 Sealing

17.3.1 Where contracts are completed by each side adding their formal seal, such contracts shall be signed by at least two **Officers** which, together with the fixing of the council's seal, must be witnessed by a further officer on behalf of the **Director of Corporate Services**.

17.3.2 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed without the authority of the **Director of Corporate Services**.

17.3.3 A contract must be sealed where:

- The Council may wish to enforce the contract more than six years after its end;
- The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services;
- There is any doubt about the authority of the person signing for the other contracting party; or
- The *Total Value* exceeds **£200,000**.

18. BONDS AND PARENT COMPANY GUARANTEES

18.1 The **Officer** must *Consult* with the **Director of Corporate Services** and the **Director of Finance** about whether a *Parent Company Guarantee* is necessary when a *Candidate* is a subsidiary of a parent company and:

- The *Total Value* exceeds **£200,000**; or
- Award is based on evaluation of the parent company; or
- There is some concern about the stability of the *Candidate*.

18.2 The **Officer** must *Consult* with the **Director of Corporate Services** and the **Director of Finance** whether a *Bond* is needed: where the *Total Value* exceeds **£200,000** or where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the *Candidate* or there are other risks associated with the intended contract which require additional security.

18.3 Where the intended *Tender* and/or *Contract* is likely to have *TUPE* implications or require amendment to the Council's Pension Fund arrangements, the **Director of Finance** in consultation with the **Director of Corporate Services** shall agree the intended actions and the value of any Pensions Bond required, prior to any further authorisation otherwise identified.

19. PREVENTION OF CORRUPTION

19.1 The **Officer** must comply with the *Code of Conduct* and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the *Officer* to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 19.2 below.

19.2 The following clause must be put in every written Council contract: *"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:*

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done),*
or
- (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972, or*
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.*

Any clause limiting the Contractor's liability shall not apply to this clause."

20. DECLARATION OF INTERESTS

20.1 If it comes to the knowledge of a Member or an employee of the authority that a contract in which he or she has a personal or pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the **Chief Executive**. The **Chief Executive** shall report such declarations to the appropriate *Committee*.

20.2 Such written notice is required irrespective of whether the pecuniary interest is direct or indirect. An indirect pecuniary interest is distinct from a direct pecuniary interest in as much as it is not a contract to which the member or employee is directly a party.

20.3 A shareholding in a body not exceeding a total nominal value of **£25,000 or 1%** of the nominal value of the issued share capital (whichever is the less) is not a personal or pecuniary interest for the purposes of this *Contract Procedure Rule*.

20.4 The **Chief Executive** shall maintain a record of all declarations of interests notified by members and **Officers**.

20.5 The **Chief Executive** shall ensure that the attention of all members is drawn to the National Code of Local Government Conduct.

SECTION 5: CONTRACT MANAGEMENT

21. MANAGING CONTRACTS

21.1 **Heads of Service** in sponsoring departments are to name **Contract Managers** for all new *Contracts*. All *Contracts* must have a named Council **Contract Manager** for the entirety of the contract.

21.2 **Contract Managers** must follow the reporting requirements and procedures set out in these Contract Procedure Rules and any supplementary Guidance issued by the **Head of Procurement**

21.3 As a minimum requirement the named **Contract Manager** will compile and maintain the standard “**Contract Monitoring Summary**” Template Document (as included in the Procurement Pages of the “Mangers Tool Kit” on OneBromley), and ensure their content is maintained and accurately reflects the information included in the *Service Contracts Register* required to be maintained by CPR 2.2 and 6.4.

22. RISK ASSESSMENT AND CONTINGENCY PLANNING

22.1 All *Procurement* activity and projects with an estimated value above **£100, 000** must incorporate the use of the *Council’s Programme and Project* methodologies as appropriate for the cost, complexity and risk associated with the intended activity, including those associated with TUPE, Pensions and Tax liabilities. This includes the preparation of a business case. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

22.2 For all contracts with a value of over **£50,000**, **Contract Managers** must:

- Maintain a risk register during the contract period;
- Undertake appropriate risk assessments and for identified risks;
- Ensure contingency measures are in place.

23. CONTRACT MONITORING, EVALUATION AND REVIEW

23.1 All contracts which have a value higher than **£200,000** limits, or which are *High Risk*, are to be subject to monthly formal review by the **Head of Service**. The review may be conducted quarterly if agreed by the **Director of Finance**.

23.2 For all contracts with a value higher than **£500,000**, or which are *High Risk*, an annual report must be submitted to the **Portfolio Holder** the responsible **Officers** having submitted for consideration a formal “Gate Report”, covering, as appropriate, the matters identified in the Council’s standard “Gate Reporting Template for consideration as part of Contract Monitoring/Management requirements.

23.3 For all contracts with a value higher than **£1,000,000**, or which are *High Risk*, an annual report must be submitted to the **Executive** the responsible **Officers** having submitted for consideration a formal “Gate Report”, covering, as appropriate, the matters identified in the Council’s standard “Gate Reporting Template for consideration as part of Contract Monitoring/Management requirements.

23.4 A Council agreed *Gateway Review* process must be applied to all contracts deemed to be *High Risk*, *High Value*, or *High Profile*. This process must be applied at key stages of major procurements.

23.5 During the life of the contract, the **Officer** must monitor in respect of:

- Performance;
- Compliance with specification and contract;
- Cost;
- Any *Value for Money* requirements;
- User satisfaction;
- Risk management.

23.6 Where the *Total Value* of the contract exceeds **£500,000**, the **Officer** must make a written report to the relevant **Portfolio Holder** evaluating the extent to which the *Procurement* need and the contract objectives (as determined in accordance with Rule 5.2) were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract and the authorisation requirements identified in Rule 5.1 and 16.5 above.

23.7 *Variations and Extensions*

23.7.1 No *Variation* should be issued or *Extension* agreed unless there is sufficient budgetary provision for each contract or where it is permitted under the Council’s *Capital Programme Procedures* and related responsibilities for financial control of capital projects.

23.7.2 All *Variation* Orders must be issued promptly and authorised before the work is undertaken. All variations will be contained within agreed limits for each contract and made within the authorised limits determined by the **Chief Officer** as provided for in *Financial Regulations* and the *Capital Programme Procedures*.

23.7.3 Subject to any requirements of *Financial Regulations*, statutory restrictions and compliance with any provisions of the Public Procurement Regulations (particularly those relating to negotiation; modifications and extensions and any limitations imposed by Clause 72 of the Regulations above), a **Chief Officer** may authorise the following extension to an existing contact:

- An extension for a particular period provided for within the terms of the contract (but subject to satisfactory outcomes of contract monitoring, such information having been provided to where required in these Rules to the relevant **Portfolio Holder** and/or **Executive**); or
- A single extension of the contract by up to one year; or
- An increase in the scope of activities being undertaken.

Providing that where the value of any single and/or all extensions granted is greater than **£50,000** the processes and authorisation procedures required shall be the same as those identified in Rule 13 above.

23.7.4 The **Chief Officer** shall consult with the **Head of Procurement** and **Director of Corporate Services** on any need to issue a *Modification Notice* or take other action required by Cl.72 of the *Public Contract Regulations*.

DEFINITIONS APPENDIX (Needs to be update to amend/add 2015 review requirements)

Agent - A person or organisation acting on behalf of the Council or on behalf of another organisation.

Agree / Agreement – the process whereby a written record of the agreement of the relevant officer/Member is produced. For the Purpose of the operation of Contract Procedure Rules, the evidence of agreement required in writing can either be the physical endorsement /signature of a prepared document or an Email sent from a Council E mail Address associated with the Authorising Officer, providing the necessary records are maintained either in a soft or hard format.

Approval – the process whereby a formal report is submitted to and written approval obtained from the relevant officer/Member/Committee/Council.

Approved List - A list drawn up in accordance with Rule 7.2.

Award Criteria - The criteria by which the successful *Quotation* or *Tender* is to be selected (see further Rules 10 and 11.2e).

Audit Sub Commiitie – A Sub Committee of General Purposes and Licensing Committee having the role and responsibilities described within the Council’s Constitution.

Award Procedure - The procedure for awarding a contract as specified in Rules 8, 10 and 15.

Best Value - The duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the council. Value for Money has now in many instances superseded this terminology.

Bids – oral or written quotations or written tenders as the context required or demands.

Bond - An insurance policy: if the contractor does not do what it has promised under a contract with the council, the council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the council against a level of cost arising from the contractor’s failure.

Business Continuity Plan – A plan compiled and included within the Council’s Business Continuity arrangements in compliance with and support of its responsibilities and duties as identified in the Civil Contingencies Act.

Call In Procedure – The procedure whereby 5 or more Members of the Council can require any decision of the Executive, Portfolio Holder, or Committee of the Executive or any decision mad by an officer under delegated authority from the Executive to be subject of scrutiny by the relevant PDS Committee as set out of Part 4 of the Constitution (see Annex D).

Candidate - Any person who asks or is invited to submit a *Quotation* or *Tender*.

Capital Programme (Control) Procedures – as set out and included in the Capital Programme/Budget book

Central Purchasing Organisation (CPO) – A Central Purchasing Body (CPB) as defined in the Public Contracts Regulations which acquires or concludes arrangements for works, goods and services, in compliance with the Regulations and which is intended for the use of one or more contracting authorities.

Chief Executive – the Council's Head of Paid Service as defined in the Scheme of Delegation

Chief Finance Officer – the Council's *Director of Finance* or their nominee or such other officer as may be designated Chief Finance Officer by the Council.

Chief Officer - The officers defined as such in the *Constitution*.

Code of Conduct - The code regulating conduct of *Officers* issued by the *Director of Corporate Services*.

Committee - A committee, which has power to make decisions for the Council, for example a joint committee with another local authority, but not a scrutiny committee.

Constitution - The constitutional document approved by the council which:

- allocates powers and responsibility within the council and between it and others
- delegates authority to act to the *Cabinet, Committees, Portfolio Holders* and *Officers*
- regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.

Consult /Consultation - A process whereby the advice and necessary input to any particular contracting process is obtained and properly considered

Consultant - Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the council has no ready access to employees with the skills, experience or capacity to undertake the work.

Contract - A "contract" is an agreement between two or more parties which is intended to give rise to legal relations.

The Council will accept tender documents supported by electronic signature, which have been submitted through the mandated E Procurement System, providing that where the value is £100k+ the contract document is formally compiled and signed with Legal input and overview. Those over £200k are required to be signed under seal as per CPR 17.3.

Contractor - A person or entity that enters into a contract.

Contracting Decision - Any of the following decisions:

- composition of *Approved Lists*
- withdrawal of *Invitation to Tender*
- whom to invite to submit a *Quotation* or *Tender*
- *Shortlisting*
- award of contract
- any decision to terminate a contract
- any resulting amendments of the Council's Pensions Scheme.

Contracts Manager – The officer within a service or client department of the Council with principle responsibility for the letting and management of any contract for the supply of *Goods, Services or Works* on behalf of the Council.

Contract Monitoring Summary Template - A Document held and maintained by the designated **Contract Manager** to accurately record pertinent Contract information on a standard basis, to better inform management, members and other interested parties on the particular circumstances and requirements of Contracts placed.

Contract Notice – The notice published in the Official Journal of the Economic Union advertising the Council's intention to seek tenders or expressions of interest in a contract for the supply of *Goods, Services and Works*.

Corporate Contract - A contract placed by the *Corporate Procurement Division* or endorsed by the *Head of Procurement* for Corporate use.

Corporate Contracts Register - A record of contracting activity maintained by the *Council's Corporate Procurement Group* which records all contracts placed with an estimated value of **£200,000** and above.

Corporate Procurement Group -The council's central procurement unit charged with providing strategic direction and advice to secure *Value for Money* in the Council's procurement activities.

Director of Corporate Services - As defined in the *Constitution*.

Estimated Cost (or Value) - The expected value of *Goods, Services and Works* to be purchased by the Council including any which may be acquired during any optional extension to the term of the contract.

EU Procedure - The procedure required by the EU where the *Total Value* exceeds the *EU Threshold*.

EU Procurement Regulations – Requirements as set out in the “Public Procurement Regulations 2006 (SI 2006/5) as may be amended from time to time.

EU Threshold - The contract value at which the EU Public Procurement Directives apply – as advised from time to time by the **Head of Procurement** and detailed in the Procurement Tool Kit:

Executive (of the Council) - As defined in the Council's *Constitution*.

Exemptions – the specific waiver of a requirement for securing competitive *Bids*.

Extensions – The provision whereby an additional period of time is included and/or authorised to allow for continued performance of the contract or the scope of the arrangement and /or requirement carried out is increased.

Extreme Urgency – events unforeseeable by, and not attributable to, the Council which preclude compliance with time limits for tendering contracts in accordance with the *EU Procurement Regulations*.

Director of Finance - – As defined in the *Constitution*

Financial Officer - The most senior *Officer* representing the or designated by him to provide financial advice to the *Chief Officer*.

Financial Regulations - The financial regulations outlining *Officer* responsibilities for financial matters issued by the **Director of Finance** in accordance with the *Constitution*.

Formal Consultation / Formally Consult – A process where a written record and response/acknowledgement of the document considered is produced.

Framework Agreement - An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

Gateway Review – A review process completed using the Council's Programme and Project Management guidance or similar best practice, such as that identified in the Cabinet Office / GPS Gateway process, to overview and validate the direction and outcomes from any particular contracting arrangement.

Goods – A physical asset or consumable such as materials, products or equipment and can include a commodity such as Gas, Water or electricity.

Government Procurement Agreement - The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the *European Economic Area* are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.

Grant Payments - are a means of providing financial assistance to third sector organisations for a special purpose, for example to support the wider objectives of the local authority in promoting the social, economic or environmental well being of the area. Grant funding is usually preceded by a call for proposals. The grant offer letter will normally set out general instructions as to how the special purpose is to be achieved (i.e. through conditions that limit or guide the behaviour of the third sector organisation).

Head of Finance – An Officer designated by the **Director of Finance** – As defined in the *Constitution* as having responsibility for financial matters within a particular Directorate, Department or part thereof.

Head of Procurement – The Officer, appointed from time to time, with a “Head of Profession” responsibility for overseeing the Council’s Procurement activity.

Head of Service (HOS) – The Officer identified in the departmental structure as having responsibility for a particular activity or service below Chief Officer Level

High Profile - A high-profile purchase is one that could have an impact on functions integral to council service delivery should it fail or go wrong.

High Risk - A high-risk purchase is one which presents the potential for substantial exposure on the Council’s part should it fail or go wrong.

High Value - A high-value purchase is where the value exceeds the *EU Threshold* values.

Invitation to Tender - Invitation to tender documents in the form required by these contract procedure rules.

Key Decision - Decisions that are defined as key decisions in the *Constitution*.

Line Manager - The *Officer’s* immediate superior or the *Officer* designated by the *Chief Officer* to exercise the role reserved to the line manager by these contract procedure rules.

Nominated Suppliers and Sub-contractors - Those persons specified in a main contract for the discharge of any part of that contract.

Nominee(s) – A named individual to whom a *Chief Officer* has delegated certain of his/her specific duties, powers and functions in writing.

Non-commercial Considerations -

(a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces (‘workforce matters’).

(b) Whether the terms on which contractors’ contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.

(c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.

(d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons (‘industrial disputes’).

(e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.

(f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.

(g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.

(h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best *Value*; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (*TUPE*) may apply.

Officer - The officer designated by the *Chief Officer* to deal with the contract in question.

Official Order – as provided for in Financial Regulations

Parent Company Guarantee - A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the council, the council can require the parent company to do so instead.

Portfolio Holder - A member of the *Cabinet* to whom political responsibility is allocated in respect of specified functions.

Priority Services - Those services required to be tendered as defined in the EU public procurement directives.

Procurement - The process of acquiring goods, works and services from suppliers. The process spans the whole *Procurement* cycle from the identification of the need through to the end of the service contract or the end of the useful life of an asset. It therefore covers everything from “paper clips” to PFI”.

Procurement Strategy - The document setting out the Council’s approach to *Procurement* and key priorities for the next few years.

Quotation - A quotation of price and any other relevant matter (without the formal issue of an *Invitation to Tender*).

Relevant Contract - Contracts to which these contract procedure rules apply (see Rule 4).

Service Contracts Register – A sub set of the Corporate Contracts Register recording contracting activity required to be subject to competitive tendering and /or valued **£50,000** or above estimated value.

Service Level Agreement (SLA) - An arrangement with a VSO (or similar organisation) which provides the cost and outcome of any given service provision.

Services – An intangible asset, activity or facility provided by a third party (e.g. advertising space).

Scheme of Delegation – The arrangements made by the Council to delegate parts of its decision making processes, as provided for by its *Constitution*.

Shortlisting - The process of selecting *Candidates* who are to be invited to quote or bid or to proceed to final evaluation, including tender lists compiled under a two stage tender process.

Supervising Officer - The *Line Manager's* immediate superior.

Supplies – Generally relates to a purchase or hire of goods (including electricity, gas etc.).

Sustainable Procurement – A process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only for the organisation, but also society and the economy while minimising damage to the environment.

Tender - A *Candidate's* proposal submitted in response to an *Invitation to Tender*.

Tender Record Log - The log kept by the Relevant *Officer* to record details of *Tenders* (see Rule 14.5).

Total Value - The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:

(a) where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period

(b) where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months

(c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48

(d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result

(e) for *Nominated Suppliers and Sub-contractors*, the total value shall be the value of that part of the main contract to be fulfilled by the *Nominated Supplier or Sub-contractor*.

TUPE - Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006 No.246) - Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (eg following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business.

Value for Money – The optimum combination of *Whole Life Costs* and benefits to meet the service requirements.

Variation – Any amendment to a contract agreed in writing by the parties in accordance with its terms or by means of negotiation. Where *Extension* to the duration of a contract are considered the provisions of Para. 23.7 of these Rules apply.

Voluntary Sector Organisation (VSO) – Also known as the “third sector” it includes a range of organisations from unincorporated associations to companies limited by guarantee with

charitable status. Generally, but not always, they funded by grant and contract with the Council by way of a *Service Level Agreement, Note* - the same organisation may have separate funding arrangements for different elements of the activity required.

Waive or Waiver – the dispensation of the need for compliance with a particular requirement of these *Contract Procedure Rules*.

Whistle Blowing – The raising of concerns under the Public Interest Disclosure Act 1998, in accordance with the Council’s Whistleblowing policy, about some danger or illegality arising or potentially arising from performance (or non performance) of its function.

Whole Life Costs – The consideration of all costs incurred during the life cycle of the work, goods, service or utility purchased, including those identified by adopting good *Sustainable Procurement* practice.

Work or Works – Those activities listed as Schedule 2 of the *EU Procurement Regulations* being, in general terms, construction, engineering or building works.

Procurement Guidance and Practice Notes – see

<http://onebromley/HDol/ManKit/wikisite/Wiki%20Pages/Procurement.aspx>

on the Procurement Pages on the Mangers Toolkit

EU Contracting Values and Summary of Contracting Arrangements



Crown
Commercial
Service

A BRIEF GUIDE TO THE EU PUBLIC CONTRACTS DIRECTIVE (2014)

October 2015

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Introduction

- 1.1 **The Public Contracts Directives set out the legal framework for public procurement. This guidance note covers the new Public Contracts Directive which will apply when contracting authorities seek to acquire supplies, services, or works (e.g. civil engineering or building). Separate information will be provided to cover new directives on contracts awarded by utilities bodies (e.g. water companies) and concessions contracts. This note does not cover the procurement of contracts for defence and security requirements¹.**
- 1.2 **The Public Contracts Directive sets out procedures which must be followed before awarding a contract to suppliers (i.e. providers of works, supplies or services) when its value exceeds set thresholds, unless it qualifies for a specific exclusion -- e.g. on grounds of national security. Details of the current thresholds can be found at: <https://www.gov.uk/transposing---eu---procurement---directives>.**
- 1.3 **This guidance summarises the main provisions of the Public Contracts Directive. It does not set out all the relevant rules. It is not intended as a substitute for project specific legal advice, which should always be sought by a contracting authority where required. This guidance may not apply to contracting authorities in Scotland**
- 1.4 **The EU procurement regime, based on the Treaty principles of transparency, non---discrimination, equal treatment and proportionality and described by the Public Contracts Directive and Regulations referred to in this guidance, is not static. It is subject to change, driven by evolving European and domestic case law, European Commission communications, new and revised Public Contracts Directives and amendments to the existing UK Regulations.**

2. Public Contracts Directives in national law

- 2.1 Public Contracts Directive 2004/18/EC on public procurement was implemented into national law in the UK by the Public Contract Regulations 2006 (with separate transposition in Scotland). These Regulations came into force on 31 January 2006 and have been amended a number of times. New UK Regulations, which will supersede the 2006 Regulations, will implement the new procurement Directives. This guidance is based on the published text of the new Public Contracts Directive (2014/24/EU) which can be viewed at <https://www.gov.uk/transposing---eu---procurement---directives#the---directives>

3. Purpose

- 3.1 The purpose of the EU procurement rules, underpinned by the Treaty principles, is to open up the public procurement market and to ensure the free movement of supplies, services and works within the EU. In most cases they require competition. The EU rules reflect and reinforce the value for money (vfm)² focus of the Government's procurement policy. This requires that all public procurement must be based on vfm, defined as "the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought", which should be achieved through competition, unless there are compelling reasons to the contrary.

¹ More details at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/35925/dsd_govt_awareness_guide.pdf

² See Managing Public Money at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_Av2---chapters_annex_web.pdf.

4. Reform of the EU rules – The 2014 Public Contracts Directives

- 4.1 **On 20 December 2011 the European Commission published proposals to revise and update the public sector and utilities procurement Directives (2004/18/EC and 2004/17/EC respectively) plus a proposed new directive on the award of concession contracts³.**
- 4.2 **Following negotiations between Member States, the European Parliament and the Commission the texts of the Public Contracts Directives have been agreed and came into force on 17 April 2014. Member States must transpose the Public Contracts Directives into national law within 24 months of that date.**
- 4.3 **The new rules support UK Government priorities of economic growth and deficit reduction by making the public procurement process faster, less costly, and more effective for business and procurers alike. They represent an excellent outcome from the UK's extensive negotiations in Brussels.**
- 4.4 **These changes provide a much more modern, flexible and commercial approach compared to the existing regime. Outdated and superfluous constraints have been removed, and many new features have been added to streamline and modernise public procurement. For contracting authorities, this means being able to run procurement exercises faster, with less red tape, and more focus on getting the right supplier and the best tender. And for suppliers, the process of bidding for public contracts should be quicker, less costly, and less bureaucratic, enabling suppliers to compete more effectively.**
- 4.5 **The Minister for the Cabinet Office has asked the Crown Commercial Service to prepare the transposition of the new rules earlier than the time allowed, to take advantage of the improvements in the rules as soon as possible.**

5. New provisions

- 5.1 **This note outlines the requirements of the new Public Contracts Directive, drawing attention to a number of changes to procedures and requirements for public procurement. More detailed guidance on some of the changes described will follow in due course.**
- 5.2 **A list of the key changes follows immediately below, with additional detail in the subsequent sections:**

General

- 5.3 **Contracting authorities will be able to reserve the award of certain services contracts to mutuals/social enterprises for a time---limited period**

- 5.4 **Although the thresholds of application of the rules will not change immediately, the Public Contracts Directive includes a binding commitment on the Commission to review the economic effects of the thresholds on the internal market. This review must be completed by 2019.**

Facilitating SME involvement

- 5.5 **Contracting authorities are encouraged to break contracts into lots to facilitate SME participation.**

³ Concessions contracts are currently subject to minimal EU regulation; the proposed new legislation aims to ensure that concessions are competed effectively. Concessions contracts involve giving exploitation rights as part of the supplier's reward for delivering a public service or building – examples include toll bridges and car parks built on public--authority--owned land. Risk--transfer is also a significant feature of concessions.

- 5.6 **A turnover cap has been introduced to facilitate SME participation. Contracting authorities will not be able to set company turnover requirements at more than two times contract value except where there is a specific justification.**
- 5.7 **A central, on-line point called “E-certis” where suppliers can find out the type of documents, certificates etc which they may be asked to provide in any EU country, even before they decide to bid. This should help suppliers to bid cross-border, if they are unfamiliar with these requirements.**

Selection of Suppliers

- 5.8 **A much simpler process of assessing bidders’ credentials, involving greater use of supplier self-declarations, and where only the winning bidder should have to submit various certificates and documents to prove their status.**
- 5.9 **Poor performance under previous contracts is explicitly permitted as grounds for exclusion.**
- 5.10 **Various improved safeguards from corruption:**
- **Requirements on contracting authorities to put in place appropriate safeguards against conflicts of interest. The rules are not prescriptive on what the safeguards should be, but compliance could be achieved, for example, through a common current practice amongst many UK contracting authorities, where declarations are signed by procurement staff to confirm they have no outside interests with bidders etc;**
 - **Time limits for the exclusion of suppliers (not more than 3 or 5 years depending on the reason for the exclusion);**
 - **Suppliers who have been excluded from public procurement for bad practice can have the exclusion ended if they effectively “self clean”.**

Procedure changes

- 5.11 **Preliminary market consultations between contracting authorities and suppliers are encouraged, which should facilitate better specifications, better outcomes and shorter procurement times.**
- 5.12 **More freedom to negotiate. Constraints on using the competitive procedure with negotiation have been relaxed, so that the procedure will generally be available for any requirements that go beyond “off the shelf” purchasing.**
- 5.13 **The distinction between Part A and Part B Services has been removed, and a new light-touch regime introduced for social and health and some other services. There is an OJEU advertising requirement and other specific**

obligations for this new light-touch regime, but a much higher threshold has been agreed (EUR 750,000).

- 5.14 A new procedure, the “Innovation Partnership” procedure, has been introduced. This is intended to allow scope for more innovative ideas. The supplier bids to enter into a partnership with the authority, to develop a new product or service.
- 5.15 The statutory minimum time limits by which suppliers have to respond to advertised procurements and submit tender documents have been reduced by about a third. This flexibility could be helpful for speeding up simpler or off-the-shelf procurements, but still permits longer timescales for requirements where suppliers will need more time to respond.

Electronic procurement

- 5.16 Electronic versions of the procurement documentation must be available through an internet URL immediately on publication of the OJEU contract notice.
- 5.17 Full electronic communication (with some exceptions) will become mandatory for public contracts 4.5 years after the Public Contracts Directive comes into force (i.e. October 2018). For central purchasing bodies the deadline is three years (April 2017).
- 5.18 The rules on “Dynamic Purchasing Systems” (DPS) have been greatly simplified, with the removal of the onerous obligation to OJEU-advertise call-off contracts made under the DPS.
- 5.19 Electronic catalogues for public procurement are expressly permitted, removing any doubt as to their legality.

Contract award

- 5.20 Improved rules on social and environmental aspects, making it clear that:
- social aspects can now also be taken into account in certain circumstances (in addition to environmental aspects which have previously been allowed);
 - contracting authorities can require certification/labels or other equivalent evidence of social/environmental characteristics, further facilitating procurement of contracts with social/environmental objectives;
 - contracting authorities can refer to factors directly linked to the production process.

- 5.21 **The full life---cycle costing can be taken into account when awarding contracts; this could encourage more sustainable and/or better value procurements which might save money over the long term despite appearing on initial examination to be more costly.**
- 5.22 **Legal clarity that contracting authorities can take into account the relevant skills and experience of individuals at the award stage where relevant (e.g. for consultants, architects, etc).**

Other

- 5.23 **Contracting authorities no longer have to submit detailed annual statistics on their procurement activities. The Commission will collect this information directly from the online system, thereby freeing up valuable time and resources for contracting authorities.**
- 5.24 **Works concessions contracts are excluded from the Public Contracts Directive. The new Concessions Directive will apply to both works and services concessions when it is transposed into UK law.**

6. Training

- 6.1 **The EU procurement rules are detailed and technical and to assist in their understanding the Crown Commercial Service has prepared a training package for contracting authorities (though its contents may also be of interest to suppliers, advisers and other interested parties). This document is a part of that package, which is being rolled out across the public sector.**
- 6.2 **This section of the guide describes briefly the provisions of the EU procurement regime and in particular the new Public Contracts Directive. Where the Public Contracts Directive introduces major changes to the current regime these are highlighted in bold.**
- 6.3 **The training package will be available for free download from <https://www.gov.uk/transposing---eu---procurement---directives> and is also the subject of an electronic learning package which will be available to contracting authorities shortly.**

7. Geographical coverage – which countries have access to the EU rules?

- 7.1 **In addition to the 28 EU Member States and the 3 states of the European Economic Area (Iceland, Liechtenstein and Norway) the benefits of the EU public procurement rules also continue to apply to suppliers from a number of other countries where the EU has entered into an agreement. The main agreement is the one negotiated through the World Trade Organisation**

(WTO) titled the Government Procurement Agreement (GPA) http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm#govt.

7.2 Compliance with the EU rules ensures compliance with the GPA, where it applies, and suppliers from GPA countries have the same rights as EU suppliers. The non-EU countries who are signatories to the GPA are:

- Armenia; Aruba; Canada; Hong Kong, China; Iceland; Israel; Japan; Liechtenstein; Montenegro, New Zealand; Norway; Republic of Korea; Singapore; Switzerland; Taipei; and the USA.

7.3 The EU has similar Free Trade Agreements with some other countries, and contracting authorities should check to see if any of these apply if they receive expressions of interest or bids from suppliers in other, non-GPA countries. A Commission list of such agreements can be found at:

http://ec.europa.eu/internal_market/publicprocurement/rules/free_trade_agreements/index_en.htm

8. Contracts outside the scope of the Public Contracts Directives

8.1 Even when a tender process is not subject to the Public Contracts Directives, (for example because the estimated value of a contract falls below the relevant threshold), EU Treaty-based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality apply. Where the authority considers that a contract is likely to attract cross-border interest it is obliged to publish a sufficiently accessible advertisement to ensure that suppliers in other Member States can have access to appropriate information before awarding the contract. This is in line with the UK objective of achieving value for money in *all* public procurement -- not just those covered by the Public Contracts Directives. Some degree of advertising, (appropriate to the scale of the contract), is likely to be necessary to achieve transparency where the contract is likely to attract cross-border interest.

8.2 The UK regulations will also include some specific UK rules to support growth by improving suppliers' access to public contracts below the EU thresholds ("sub-threshold contracts"). These rules include requirements for advertising all public contracts below the EU thresholds, but over certain other threshold values, on Contracts Finder. They also include a requirement for contracting authorities to have regard to Crown Commercial Service guidance on the selection of suppliers and the award of contracts and to ensure that suppliers pay their sub-contractors within 30 days (as is already required of contracting authorities).

9. Does the Public Contracts Directive apply to the contract?

9.1 The Public Contracts Directive applies in principle to all contracts awarded by a contracting authority.

However, there are some specific exclusions where there is a relevant defence or security dimension, see Annex A, Flowchart 1. **The Public Contracts Directive also exempts certain contracts between contracting authorities where they are effectively meeting genuine ‘in-house’ requirements within a number of contracting authorities.** This could be through the form of a ‘vertical’ arrangement under shared control (so-called ‘Teckal bodies’ from the lead case in the European court, Case C-107/98). Or it might be through a ‘horizontal’ arrangement, where a number of contracting authorities genuinely co-operate with each other to meet a shared legal obligation (as in the *Hamburg* case in the European court, Case C-480/06).

10. **Mixed contracts**

10.1 **In some cases contracts awarded by contracting authorities will contain elements that are covered under the rules in the new public sector regulations, the new utilities regulations, the new concessions regulations and/or the Defence and Security Public Contracts Regulations. These issues are complex and will be the subject of separate guidance. See Annex A, Flowchart 2 for mixed procurements involving the new public sector regulations, the Defence and Security Public Contracts Regulations and/or Article 346 of the Treaty.**

11. **Reservation of certain contracts: mutuals and sheltered workshops**

11.1 **Mutuals**

11.2 **One of the UK priorities in the negotiations was to secure flexibility to enable fledgling public service mutuals to gain experience of delivering services before being exposed to EU-wide competition.** The new Public Contracts Directive permits competition for certain contracts, listed by CPV code, mainly in the social and health sectors, to be “reserved” to organisations such as mutuals and social enterprises meeting certain limited criteria described in Article 77 of the Public Contracts Directive. The reservation works in practice by requiring an OJEU competition for those services using the ‘light touch regime’ referred to at paragraph 12.1 below but only allowing bids from organisations meeting the mutual or social enterprise criteria.

11.3 **The reservation has time-based conditions to prevent misuse, so contracting authorities cannot reserve contracts for organisations that have been awarded contracts within the last 3 years, and contracts cannot be longer than 3 years.**

11.4 **Sheltered workshops**

11.5 **The Public Contracts Directive also expands the scope of the existing reservation for sheltered workshops/employment programmes** by allowing reservation of any contract for disadvantaged as well as disabled workers, and reducing the minimum proportion of those workers in the supplier’s workforce required for a supplier to be eligible to bid for a reserved contract. The reservation works in practice by requiring an OJEU competition for those services but only allowing bids from organisations meeting the criteria.

12. **The ‘light touch regime’ for certain services**

12.1 Under the 2006 Regulations there are different rules for so-called 'Part A and Part B' services. In the new Public Contracts Directive, the position for services contracts has changed significantly.

12.2 The main changes include:

- A new “light-touch regime” for a smaller number of categories of services contracts in the health and social service areas listed at Annex XIV to the Public Contracts Directive. Some contracts that were formerly “Part B” but are not listed in the Annex, will be subject to the *full* EU procurement rules;
- A significantly higher threshold than for supplies and for other services (EUR 750,000 for public sector authorities);
- A new obligation on contracting authorities to publish a call for competition in the OJEU, as well as a contract award notice, for above-threshold contracts covered by the light-touch regime.

12.3 Member States have flexibility to design their light touch rules. To preserve as much of the existing flexibility as possible the UK rules will be much less stringent than the full EU rules regime. As well as the OJEU advertising requirements the UK rules will require compliance with the basic Treaty principles (transparency, equal treatment, non-discrimination) and publication in OJEU of contract award notices. Otherwise, there will be considerable flexibility for contracting authorities to use procedures, tools and techniques of their own choosing, whether analogous to those in the main rules or not. More detailed information will be released by the time the UK Regulations come into effect.

13. Aggregation rules and thresholds

13.1 The threshold levels for the application of the Public Contracts Directives (which can be found using the links at: <https://www.gov.uk/transposing-eu-procurement-directives>) will be unchanged because of GPA commitments but the Commission has made a commitment to review, by 2019, the economic effects of the thresholds on the internal market. The Public Contracts Directive's rules on determining the value of a contract are unchanged.

13.2 Where a single work involves more than one contract, the estimated value of all the contracts must be aggregated to decide whether the threshold is reached. Where the threshold is reached, each of the works contracts will be covered by the rules except small contracts (known as small lots) the value of which falls below the de minimis level provided for in the Public Contracts Directive.

13.3 In determining whether the threshold has been or is likely to be reached for public supplies or services contracts, the rules require aggregation:

- of the estimated value of separate contracts for meeting a single requirement; and

- where a series of contracts or a renewable contract is entered into for supplies/services of the same type during a twelve month period.

13.4 Where an authority is divided into a number of separate operational units (SOUs) with authority to decide independently whether to enter into procurement contracts, then aggregation need only be applied to each unit. In other cases the authority as a whole must be considered for aggregation purposes. The Public Contracts Directive provides greater detail as to when aggregation can be carried out at the SOU level.

14. Electronic procurement

14.1 The Public Contracts Directive requires electronic submission of OJEU notices, electronic availability of procurement documents at the time of notice publication, and electronic communication and information exchange for all communication under the Public Contracts Directive, subject to specified exclusions. Contracting authorities must ensure that the tools and devices used for electronic communication meet certain requirements set out in the Public Contracts Directive. Contracting authorities must decide and apply to these communications, appropriate electronic security, guided by a high level framework in the Regulations.

14.2 **The Public Contracts Directive reforms the DPS to remove the previously burdensome need for OJEU**

advertising of “call-off” contracts to be awarded using the system. **Under the new rules, only the DPS itself will need to be OJEU-advertised, with call-off contracts being subject to much more straightforward procedures, similar to the established process for awarding call-off contracts under a framework agreement by mini-competition. A key advantage of a DPS compared to a framework, which it resembles, is that suppliers can be added at any time to a DPS provided that they pass the exclusion criteria and minimum capacity requirements. This will greatly streamline the system and allow greater competition to be maintained.**

14.3 **The Public Contracts Directive also provides helpful confirmation that electronic catalogues can be used as a basis for tenders for contracts or frameworks. Some safeguards are required where contracting authorities intend to compare offers without seeking re-submission of catalogues by suppliers.**

15. Central purchasing bodies

15.1 **As now contracting authorities may purchase through Central Purchasing Bodies (CPBs). CPBs may act as a ‘wholesaler’ – supplying an authority on the basis of contracts it has itself awarded and/or provide contracting authorities with access to framework deals or dynamic purchasing systems it has established.**

16. Frameworks

16.1 **The Public Contracts Directive introduces minor clarifications of the rules on frameworks relating mainly to transparency. Thus contracting authorities must not use a framework unless clearly identified in the notice as permissible users and contracting authorities must be transparent about the methods of call off to be used. It does however confirm that a contract awarded under a framework may have a completion date after the end of the framework.**

17. OJEU advertising requirement

17.1 As now, generally contracts covered by the Regulations must be the subject of a 'call for competition' published in the OJEU. **In most cases this will be a Contract Notice but in a change from the current rules contracting authorities other than central government (e.g. local authorities) will also be able to use the Prior Information Notice (PIN) for this purpose in certain defined circumstances.** A number of detailed changes have also been made to the information that must be included in the notice forms.

17.2 **The Commission is preparing revised versions of its Standard Forms to accommodate these changes. We hope these will be available in time for the UK and other Member States proposing to implement the Public Contracts Directives early. The Crown Commercial Service is considering the most appropriate way to proceed if they are not available and if necessary will issue guidance in due course.**

18. Shorter minimum time limits

18.1 **The minimum time allowed for responses or tenders is reduced to allow flexibility where the current minimum time limits are unnecessarily long.** In certain circumstances these can be shortened further where the requirement is urgent or where sufficient information has already been provided by a prior information notice to allow suppliers to respond quickly. See Annex B for a summary of the time limits in the new Public Contracts Directive.

19. Choice of procurement procedure

19.1 **The new Public Contracts Directive provides for five award procedures, rather than the existing four:**

- **the open procedure, under which all those interested may respond to the advertisement in the OJEU by submitting a tender for the contract;**
- **the restricted procedure, under which a selection is made of those who respond to the advertisement and only they are invited to submit a tender for the contract.**
- the competitive dialogue procedure, under which a selection is made of those who respond to the advertisement and the contracting authority enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender. **The new Public Contracts Directive provides greater freedom to use this procedure than do the existing rules (see below);**
- the competitive procedure with negotiation under which a selection is made of those who respond to the advertisement and only they are invited to submit an initial tender for the contract.

The contracting authority may then open negotiations with the tenderers to seek improved offers. The new Public Contracts Directive provides greater freedom to use this procedure than the existing rules (see below).

- **the innovation partnership procedure, under which a selection is made of those who respond to the advertisement and the contracting authority uses a negotiated approach to invite suppliers to submit ideas to develop innovative works, supplies or services aimed at meeting a need for which there is no suitable existing ‘product’ on the market. The contracting authority is allowed to award partnerships to more than one supplier.**

19.2 **In certain narrowly defined circumstances the contracting authority may also award a contract using the ‘negotiated procedure without prior publication’. Here the contracting authority would approach one or more suppliers seeking to negotiate the terms of the contract. One of the permitted circumstances is where, for technical or artistic reasons or because of the protection of exclusive rights, the contract can only be carried out by a particular supplier.**

19.3 Contracting authorities have a free choice between the open and restricted procedures. **The competitive dialogue procedure and the competitive procedure with negotiation are available where certain criteria are met, including where the contract is complex or cannot be purchased ‘off the shelf’.** The ‘negotiated procedure without prior publication’ may only be used in the limited circumstances described in the Public Contracts Directive.

19.4 **Contracting authorities using the restricted procedure, competitive dialogue procedure and the competitive procedure with negotiation must aim to select a number of suppliers sufficient to ensure genuine competition. Provided there are sufficient suitable candidates, the Public Contracts Directive requires a minimum of five for the restricted procedure, and three for competitive dialogue and competitive procedure with negotiation.**

20. Stages in the procurement process

20.1 **The Public Contracts Directive includes procedural requirements designed to ensure all suppliers established in countries covered by the rules are treated on equal terms, to avoid national discrimination. The rules in particular cover the following:**

- Specification stage -- how requirements must be described, avoiding brand names and other references which would have the effect of favouring or eliminating particular providers, products or services and the requirement to accept equivalence. The use of performance specifications is encouraged. **The new Public Contracts Directive also makes clear that there is some scope for building into the specification equality issues (e.g. access issues for the disabled) and social/environmental issues (e.g. a requirement to conform to social or environmental labels).** Regarding social/environmental issues, contracting authorities also may specify production processes and methods as long as they are linked to the

subject matter of the contract.

- Selection stage -- there are a number of grounds for the exclusion of suppliers based on evidence of unsuitability, some of which are mandatory. Reasons include criminal conviction for certain offences (mandatory), failure to pay taxes (mandatory) and **previous poor performance which has led to early termination, damages or other comparable sanctions (discretionary)**. Some of the grounds for mandatory exclusion are subject to account being taken of remedial action by the supplier, e.g. organisational changes. **There are statutory limits to the duration of any exclusion period.**
- **Those suppliers not excluded can then be assessed on the basis of their economic and financial standing,**
e.g. whether they meet proportionate levels of financial soundness. **The Public Contracts Directive requires that where this is judged on the basis of turnover this should not normally exceed twice the value of the contract.**
- **Suppliers may also be assessed on their technical capacity and ability e.g. that they will be adequately equipped to do the job and that their track record is satisfactory.**
- **Award stage -- the award of contract must be based on the tender most 'economically advantageous' to the authority (MEAT).** This can however include assessment on the basis of price/cost only as well as other methods including the 'best price/quality ratio' (equivalent to value for money), which can include social and environmental requirements provided they relate to the contract.

20.2 **The Public Contracts Directive also places a duty on the contracting authority to investigate tenders it considers abnormally low and to disregard those that are based on approaches in breach of international environmental or social law.**

20.3 **To allow suppliers to seek effective review of contracting authorities' decisions, contracting authorities will as now be required to include a 10--15 day standstill period⁴ between the point when the decision on the award of the contract is made and the signature of the contract. The standstill letter must provide certain information about the contracting authority's decision. There are detailed requirements for this process, which are set out in the Public Contracts Directive.**

21. Changes to contracts once awarded

21.1 **The Public Contracts Directive provides useful clarity about the extent to which a contract can be changed after award without the need to re--advertise in OJEU.** Permissible grounds for modification include the existence of suitable "clear, precise and unequivocal" review clauses in the contract; or a need for additional supplies or services where a change of supplier is impossible or would cause significant inconvenience or a need for additional deliveries due to unforeseen circumstances (both subject to 50% maximum increase in contract value); or where a new supplier replaces the existing supplier because of insolvency, genuine restructuring etc.

22. Termination of contracts

22.1 **The Public Contracts Directive contains provisions to ensure that Member States' contracts allow termination in circumstances where there has been a breach of EU law on public procurement, particularly where this results from a change in an awarded contract.**

22.2 **The contracting authority must be able to terminate a contract should any of the following three grounds occur:**

⁴ At least 10 days, when the notice is communicated using electronic means, or when using non-electronic means, there is a choice between either 15 days from date of sending; or 10 days from date of receipt

- Where the contract has been subject to a substantial modification that constitutes a new award;
- Where it is discovered after contract award that the contractor should have been excluded on mandatory exclusion grounds;
- Where the Court of Justice of the European Union (CJEU) has declared a serious infringement by the contracting authority of its obligations, meaning the contract should not have been awarded to the contractor.

22.3 The Regulations will specify that contracting authorities must include a condition in contracts allowing them to terminate if any of the grounds are found to apply. As a fallback, the Regulations will also include a deeming provision to ensure this possibility exists where a contract fails to include a termination condition.

23. Enforcement

23.1 The enforcement regime will be included in the Regulations, and derives from the Remedies Directives, which have not changed. The principal means of enforcement for a breach of the Regulations and other enforceable EU law such as the Treaty are:

- action by suppliers against individual contracting authorities in the High Court; and
- action by the Commission against the Member State in the Court of Justice of the European Union (CJEU).

23.2 The High Court's powers include both pre-contractual remedies (i.e. those that can be imposed before the contract is entered into) and post-contractual. Pre-contractual remedies include the power to suspend an incomplete contract award procedure (an injunction) or the setting aside of a decision in an incomplete contract award procedure. The High Court also has powers to award damages as a pre-contractual remedy.

23.3 Post-contractual remedies (for contracts that have already been awarded) include contractual ineffectiveness

(i.e. cancellation, but only for very serious rule breaches,) contract shortening, and civil financial penalties (fines). A properly applied standstill period gives good protection against post-contractual remedies.

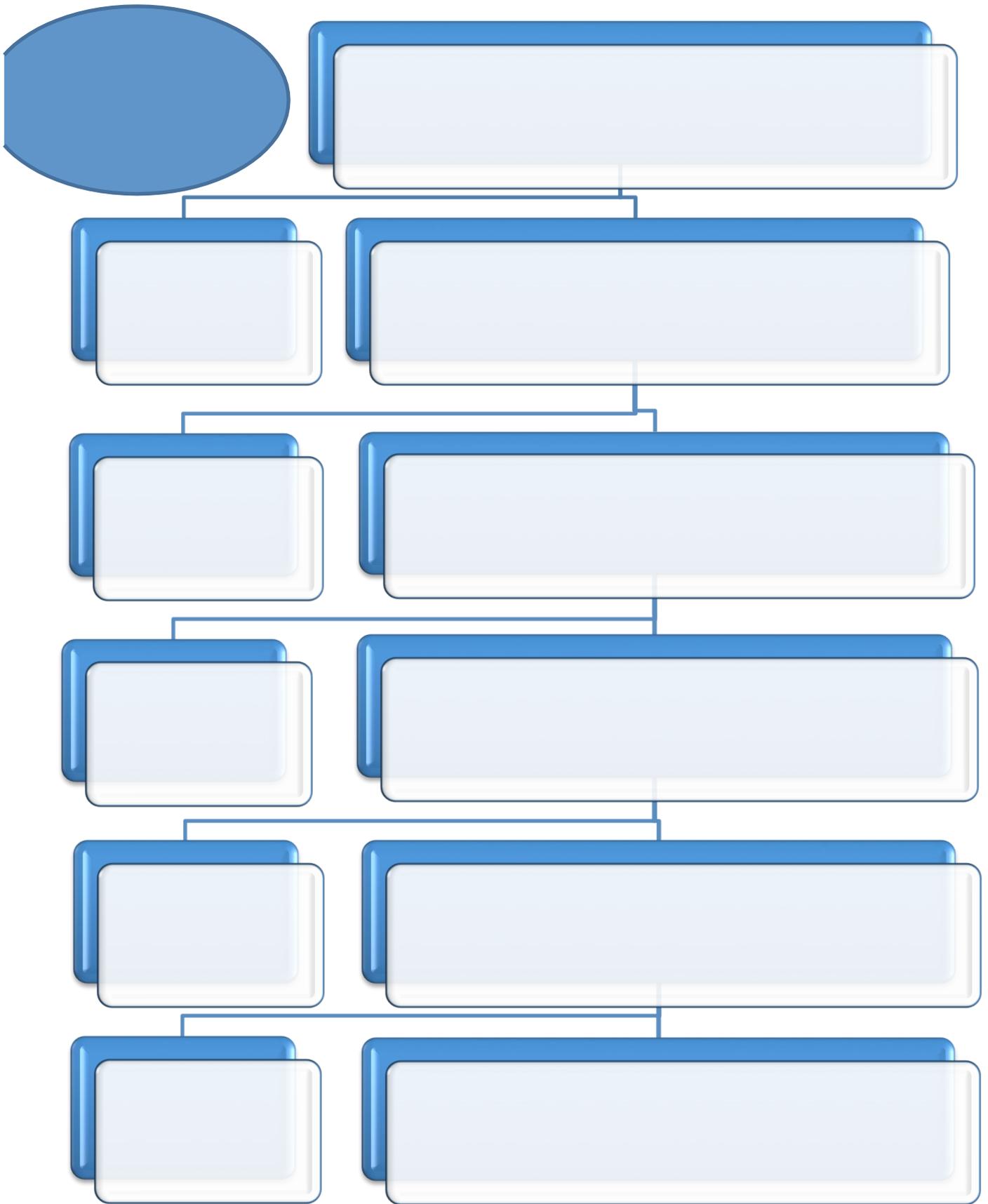
23.4 Cases can also be pursued via the European Commission, for breach of the relevant European Directive and/or the EU Treaties. These cases, where accepted by the Commission, trigger infraction proceedings against the Member State, and can lead to a CJEU hearing, substantial fines, and potentially other CJEU imposed orders against the Member State if the breach is not satisfactorily resolved by other means.

24. Further information

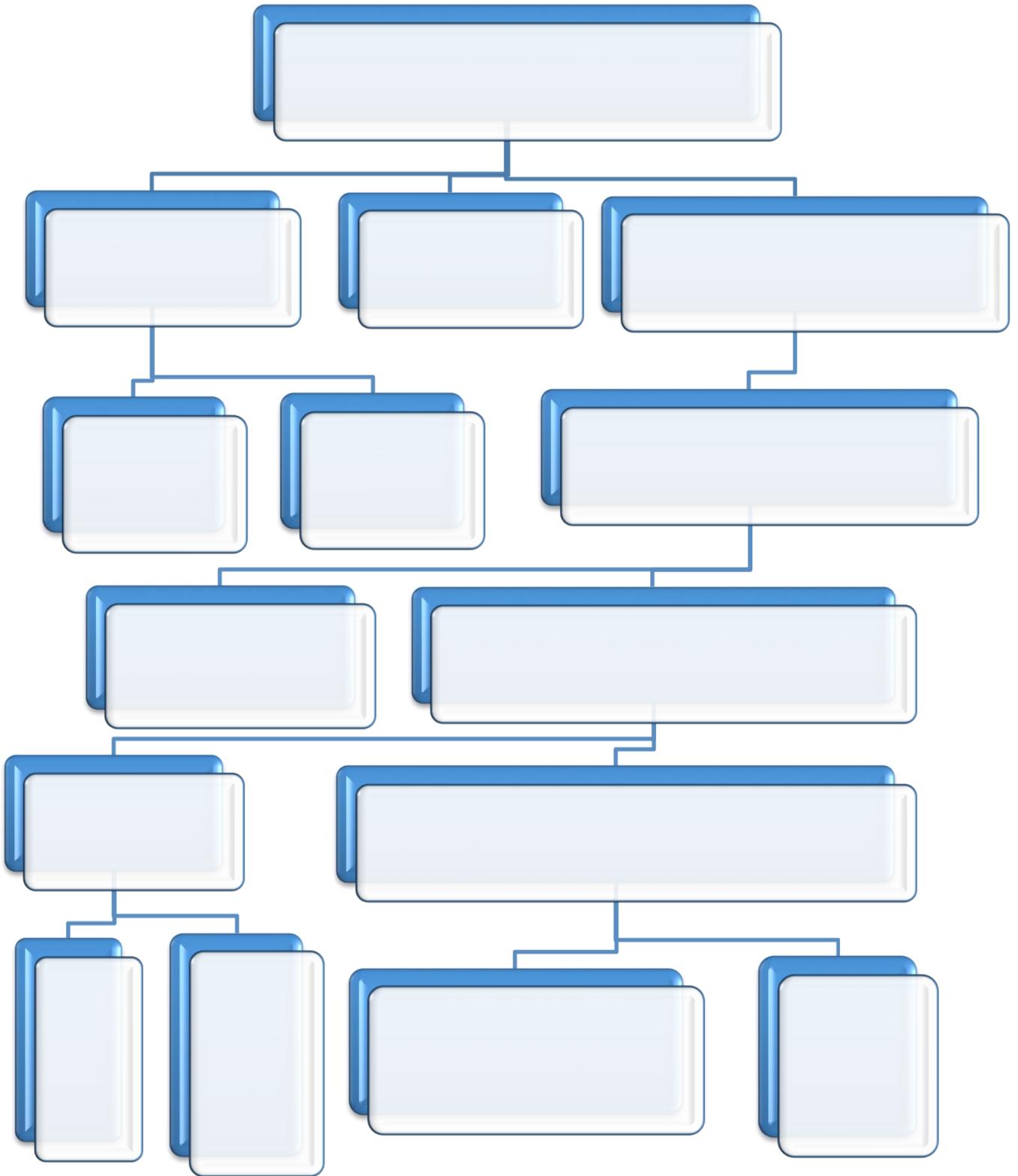
24.1 For further detailed information, including the training materials, see <https://www.gov.uk/transposing-eu-procurement-directives>. More detailed information on certain aspects of the legislation will also be made available in due course.

24.2 Enquiries should be addressed to: Crown Commercial Service, Customer Service Desk:
0345 410 2222

info@ccs.gsi.gov.uk



Annex A



Annex B

OJEU advertising time limits

Minimum OJEU time limits for the Public Contracts Directive

NORMAL MINIMUM TIME	IF ELECTRONIC TENDER PERMITTED	IF URGENT+	WHERE PIN PUBLISHED*	IF SUB CENTRAL AUTHORITY**
Open procedure				
Minimum time limit for receipt of tenders 35 days	Minimum time limit for receipt of tenders 30 days	Minimum time limit for receipt of tenders 15 days	Minimum time limit for receipt of tenders 15 days	..
Restricted procedure				
Minimum time limit for requests to participate 30 days	..	Minimum time limit for requests to participate 15 days	Minimum time limit for requests to participate 30 days	Minimum time limit for requests to participate 30 days
Minimum time limit for tenders 30 days	Minimum time limit for receipt of tenders 25 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders to be set by agreement with tenderers. In the absence of agreement minimum time limit 10 days
Competitive procedure with negotiation and innovation partnerships				
Minimum time limit for requests to participate 30 days	..	Minimum time limit for requests to participate 15 days	Minimum time limit for requests to participate 30 days	Minimum time limit for requests to participate 30 days
Minimum time limit for initial tenders 30 days	Minimum time limit for receipt of initial tenders 25 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders 10 days	Minimum time limit for tenders to be set by agreement with tenderers. In the absence of agreement minimum time limit 10 days
Competitive dialogue				
Minimum time limit for requests to participate 30 days

No explicit time limits for submission of initial/subsequent tenders	--	--	--	--
--	----	----	----	----

Notes

These are minimum time limits. When fixing the time limits for the receipt of tenders and requests to participate, contracting authorities must take account of the complexity of the contract and the time required for drawing up tenders

+ This shorter time limit is allowed where a state of urgency duly substantiated by the contracting authorities renders the minimum impracticable

* This shorter tendering time limit is allowed where contracting authorities have published a prior information notice which was not itself used as a means of calling for competition, provided that all of the following conditions are fulfilled:

- (a) the prior information notice included all the information required in section I of the PIN notice referred to in the Public Contracts Directive, insofar as that information was available at the time the prior information notice was published;
- (b) the prior information notice was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

** ‘ sub---central contracting authorities’ means all contracting authorities which are not central government authorities

ANNEX C

Contracting Extract - Officer Scheme of Delegation

PART I

GENERAL CONDITIONS GOVERNING DELEGATION OF FUNCTIONS TO CHIEF OFFICERS

	Responsibility Delegated from
1. These General Conditions and any amendment of or addition to made by the Council, shall apply to the delegation of functions specified in Part II of this document, and to any amendment of or addition to made by the Council or the Leader or the Monitoring Officer under paragraph 12 of this Part.	-
2. Powers delegated shall be exercised in conformity with the Constitution, Standing Orders, Financial Regulations and other directives of the Council in force from time to time, and in accordance with the expressed policies and objectives of the Council, the Executive or Committees relevant to the matter upon which action is to be taken.	-
3. The delegation of authority to deal with any matter shall not derogate from the power of the Council, the Executive, or Committee, Sub-Committee or Panel to call for a report on any decision or action taken, or to require any such matter under consideration to be referred to the Council or to the appropriate Executive body or Committee Sub-Committee or Panel for determination so far as this accords with the law.	Council/Leader
4. A Chief Officer may refer a matter to the Executive, the appropriate Executive Portfolio Holder or to the Chairman of an appropriate Committee and will, in any event, ensure that care is taken to identify any case within his delegated authority where unusual circumstances or other reasons suggest the desirability of Member consideration.	Council/Leader
5. If a matter involves considerations not within the purview of the Chief Officer primarily concerned, he shall consider whether it is necessary to consult any other Chief Officer concerned before authorising action, shall do so if he concludes it is necessary and shall take due account of any views that are expressed.	Council/Leader
6. When the implementation of a decision taken under the delegated authority by a Chief Officer requires the preparation of formal documents, legal proceedings or other legal process or advice, the Chief Officer concerned shall refer the matter to the Director of Corporate Services for appropriate action.	Council

<p>7. Authority to take decisions and other action including but not limited to the signing of documents and the requirement to arrange consultations shall be exercised and undertaken on behalf of the Council in the name of the Chief Officer to whom the authority to act is given, but not necessarily personally by him.¹ Therefore, under this condition each Chief Officer has power to authorise others to exercise any power conferred on him provided that any such authorisation shall be subject to these General Conditions and be commensurate with the nature of the matters to be dealt with. Further, the Chief Executive may authorise any other Chief Officer to exercise any power delegated to him in this scheme which in his judgement is consistent with that other officer's responsibility. Authorisations given by Chief Officers to others to exercise powers delegated under this scheme should be recorded in writing in a list maintained by each Chief Officer. This shall be taken to mean that, provided a Chief Officer has authorised the person making a decision on his behalf to act, that person may sign in his own name or in his Chief Officer's name when he makes that decision.</p>	<p>Council/Leader</p>
<p>8. The Chief Executive may, after consultation with any Chief Officer, refer to the Executive, the appropriate Executive Portfolio Holder, or appropriate Committee for decision any matter which has been brought to his notice and which, in his opinion, because of special difficulty or otherwise, warrants such reference.</p>	<p>Council/Leader</p>
<p>9. For the purposes of these General Conditions and the general and specific authorities to act to which they apply, the expression 'Chief Officer' shall mean:- e Chief Executive, the Director of Corporate Services, the Director of Education and Care Services, the Director of Environmental Services, the Director of Renewal and Recreation, the Assistant Chief Executive, Human Resources, the Director of Finance and the Chief Planner.</p>	<p>Council</p>
<p>10. Reference to an enactment in a grant of delegation shall be deemed to extend to and include reference to any subsequent enactment having like or similar effect as though the delegation had been granted under the subsequent enactment.</p>	<p>Council/Leader</p>
<p>11. An officer exercising any power under this scheme of delegation shall ensure that some written or other permanent record is made of his decision and, in cases where a range of alternative decisions presented themselves, shall record why he made the particular decision.</p>	<p>Council/Leader</p>

¹ This shall be taken to mean that, provided a Chief Officer has authorised the person making a decision on his behalf to act, that person may sign in his own name or in his Chief Officer's name when he makes that decision.

<p>12. For the avoidance of doubt, the Council and the Leader hereby declare that any exercise of a power by a Chief Officer, or an officer authorised by him and which, if expressly provided for by this Scheme of Delegation, could have been lawfully exercised by an officer under powers delegated to him by the Council or a Committee, shall be deemed to be authorised by this Scheme notwithstanding such express provision may not have been made in it; PROVIDED THAT, where an officer relies on this paragraph, the Monitoring Officer shall be informed by the officer of this action and the Monitoring Officer shall make a report on the matter to the next ordinary meeting of the Council.</p>	<p>Council/Leader</p>
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PART II

Subject to the foregoing, and without derogation from the powers or duties now or hereafter conferred or imposed upon officers of the Council, by statute or by any statutory instrument or regulation, authority to act for and on behalf of the Council without reference to the Council or Executive body or any Committee shall be delegated as follows:-

A. GENERAL AUTHORITIES	Responsibility Delegated from
<p>1. To each Chief Officer Authority to:-</p> <p>(i) Take all necessary action for the effective day-to-day management, administration and supervision of their Department and of the services for which they are responsible, and for the efficient discharge of the professional responsibilities of their office.</p> <p>(ii) Within budgetary provision, take all necessary action for the effective day-to-day management, administration and supervision of the land and buildings for which they are responsible, such action to include for each property concerned and as far as practicable</p> <ul style="list-style-type: none"> (a) proper documentation; (b) appropriate occupation; (c) maintenance to retain value; (d) security and satisfactory appearance; (e) an annual review to ensure property is still required; and (f) prompt release if surplus to requirements. <p>(iii) That all powers delegated to Chief Officers include authority to take action in respect of any London Residuary Body matter transferred to Bromley by virtue of the London Residuary Body (Transfer of Property etc) Order 1990 in the same way and to the same extent that they have delegated powers in respect of any</p>	<p>Council/Leader</p> <p>Council/Leader</p> <p>Leader</p>

equivalent Bromley matters.	
(iv) Incur expenditure and accept tenders for items provided for in the approved revenue estimates or approved capital programme, in accordance with the Council's Contract Procedure Rules.	Council/Leader
(v) Select quotations and tenders for works, services and/or goods within approved budgetary provision on all contracts in accordance with the Council's Contract Procedure Rules.	Council/Leader
(vi) On the best terms obtainable, dispose of stores, plant, vehicles, equipment, furniture or other such items which are obsolete, or are unusable for or surplus to the Council's requirements, subject to the Director of Finance's prior agreement to any consequential writing off of balances of book value.	Leader
(vii) Make adjustments of stock ledgers and accounts following stocktaking, subject to the Director of Corporate Services' prior agreement.	Leader
(viii) Authorise officers under their control to attend conferences, courses and similar events appropriate to their personal, official responsibilities and to the work of the particular Department, in accordance with an approved list or agreed code of practice.	Council/Leader
(ix) Vary annually fees and charges (except car parking) within policy established by an Executive body or Committee.	Council/Leader
(x) Deal with applications for re-grading in accordance with the Council's agreed procedures.	Council
(xi) Sign authorisation documents, with the exception of the Chief Officer's own personal authorisation, which shall be signed by the Director of Corporate Services.	Council
(xii) Where a complaint has been made through the Council's complaints system, decide whether there is a justifiable case for which the Council should apologise and pay compensation, up to a limit of £5,000 in any one case (or, in the case of the Chief Executive, £10,000).	Council/Leader
(xiii) Approve trips to EU countries made on Council business subject; in each case, to a subsequent report to the appropriate Executive body or Committee on the action taken.	Leader
(xiv) Enter into contracts with any voluntary sector organisation (VSO) for the provision of services by way of a service level agreement (SLA) without the necessity of competition, provided that:	Council/Leader

<p>(1) the Chief Officer is satisfied that the VSO is able to provide a satisfactory quality of service and that the sums payable under the SLA represent best value;</p>	
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<p>(2) the relevant Portfolio Holder is notified of any new SLAs being entered into;</p>	
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<p>(3) any approval, extensions or renewals of such SLAs comply with the provisions of rule 13.1 of the Contract Procedure Rules;</p>	
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<p>3. To the Director of Corporate Services Authority to:-</p> <p>(i) authorise proceedings before any Court of Summary jurisdiction in respect of any offence for which the Council by virtue of any Act of Parliament; , regulation, order or bye-law, is now or may hereafter be empowered to prosecute or to authorise the institution of such proceedings; except in cases where some other officer is specifically authorised to act;</p> <p>(ii) authorise proceedings for the recovery of debts of all kinds due to the Council (other than rates) and for the recovery of possession of premises;</p> <p>(iii) authorise the institution or defence of proceedings in the Courts to safeguard the Council's interest;</p> <p>(iv) obtain Counsel's Opinion to ensure adequate advice to the Council or Committees;</p> <p>(v) in accordance with instructions given, institute or defend any legal proceedings authorised to be taken or defended on behalf of the Council, or serve notices, including directions under section 77 of the Criminal Justice and Public Order Act 1994;</p> <p>(vi) take any action urgently required to settle legal proceedings during the course of a trial or other hearing;</p> <p>(vii) authorise permanent or temporary members of staff to represent the Council under Section 223 of the Local Government Act 1972 in proceedings before a Magistrates' Court or a Juvenile Court or Family Proceedings Court and under Section 60(2) of the County Courts Act 1984 to represent the Council in the County Court;</p> <p>(viii) issue written authorities to individual officers to act as the Council's authorised officers in the performance of their statutory or other duties (as evidence of their bona fides); provided that any written authority to enter upon land or premises is in pursuance of a statutory power of entry or inspection;</p> <p>(ix) sign and serve on behalf of the Council notices authorised by statute to ascertain ownership and other interest in land;</p> <p>(x) sign and approve service of Notices to Treat in pursuance of confirmed compulsory purchase orders and, where possession is required without waiting for settlement of terms of acquisition, sign and approve the service of Notices of Entry;</p>	<p>Council/Leader</p> <p>Council/Leader</p> <p>Council/Leader</p> <p>Council/Leader</p> <p>Council/Leader</p> <p>Council/Leader</p> <p>Council</p> <p>Council/Leader</p> <p>Council</p> <p>Leader</p>
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(xi) approve the assignment of contracts;	Council/Leader
<p>4. To the Director of Education and Care Services , authority to:-</p> <p>Negotiate schedules of rates and other contractual provisions with registered residential and nursing home providers and/or care service providers to facilitate client choice within community care legislation. Clients should be directed to providers on such Approved Lists although the Director may agree to placement with a non approved provider provided that</p> <p>(i) the clients' choice is appropriate to their needs and</p> <p>(ii) the client meets the relevant eligibility criteria</p> <p>(iii) the costs fall within the rates accepted by the Council for accommodation and/or care for clients with their specific eligibility or a third party has entered into a binding contract with the provider and Council to meet any difference</p> <p>(iv) as far as possible inflationary increases in such rates should be negotiated at the outset.</p>	Leader

AUTHORITIES RELATED TO THE FUNCTIONS OF INDIVIDUAL PORTFOLIO HOLDERS AND COMMITTEES

DECS	(27)	Approve the placing of children with special educational needs in suitable schools as specified in a statement and including day, residential, independent and non-maintained special schools and special schools maintained by other authorities.	Leader
DECS	(28)	Arrange for home or hospital tuition in appropriate cases.	Leader
DECS	(30)	Make arrangements for transport of pupils.	Leader
DECS	(31)	Provide support services as requested by establishments.	Leader
DECS	(41)	In cases of urgency seek planning permission for mobile accommodation at primary and secondary schools in accordance with Regulation 3 of the	Leader

Town & Country Planning General Regulations Act 1992 on the understanding that a full explanation for the need will accompany each application.

Minor Improvement Budget Schemes

DES (62) Approve expenditure on schemes from within the minor improvement budget. Leader

Traffic Management Schemes – Civil Engineering Costs

DES (63) Following agreement in principle to traffic management schemes by the Council, approve the detailed civil engineering element costs. Leader

Contractors Bonds

All (44) Allow contractors to obtain their own bonds for due performance of any proposed contract, subject to the nominated bondsman being acceptable to the Director of Corporate Services and to any additional cost being met by the contractor. Leader

FD (46) The Director of Finance shall be the Chief Finance Officer for the purposes of Section 114 of the Local Government Finance Act 1988. Council

Energy Contracts

FD (51) In consultation with the DECS and relevant Executive Portfolio Holders, to accept energy tenders for gas and electricity for those schools which have opted into a corporate contract (in accordance with the decision of the Executive on 21st July 2008). Leader

FD (52) To accept energy tenders for gas and electricity for the remainder of the Council (in accordance with the decision of the Executive on 21st July 2008). Leader

DECS (18) Authority to allocate Housing Association Programme funds in accordance with the criteria contained in Social Services and Housing Committee Minute 232(g) (21st July 1997). Leader

Libraries

DRR (2) Select and purchase books and other library and museum materials and arrange loan exhibitions. Leader

KEY DECISIONS, MEMBER AUTHORISATION AND DELEGATION

GUIDELINES FOR KEY DECISIONS MADE BY OFFICERS

Where a Chief Officer is taking a Key Decision it must in most respects be dealt with in a similar way to a Key Decision being made by a Portfolio Holder or the full Executive at a meeting. The following guidelines explain what action is required to comply with the Local Authorities (Executive Arrangements) (Access to Information) Regulations 2000 and the Council's Constitution.

What is a Key Decision?

A Key Decision is an executive decision which

(a) results in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the budget for the service or the function to which the decision relates – the thresholds for the various portfolios are set out below –

Adult & Community Services/Children & Young People/Environment & Leisure Resources	£500,000
Public Protection & Safety/Local Economy	£250,000
	£50,000

(b) is significant in terms of its effects on communities living or working in an area comprising two or more wards. Any decision likely to have an impact on the amenity of a community or quality of service provided by the authority to a significant number of people should be regarded as key.

A Key Decision may be taken by the Council, the Executive, an individual Executive Portfolio Holder or by an officer using delegated powers. Decisions made by Chief Officers concerning the award of contracts will be key decisions where the total value of the contract is likely to be above the relevant portfolio threshold.

Before a Key Decision is made -

- it must be included up to four months beforehand in the monthly **Forward Plan of Key Decisions** issued by Democratic Services.

(The Forward Plan is updated in the middle of each month and a request for new items for inclusion is issued by Democratic Services* at the beginning of each month.)

- a **report** should be prepared by the officer dealing with the matter and issued to the decision taker five clear days** before the decision is to be taken. *The report must be supplied to Democratic Services to be copied to Members. The report need not follow the corporate Committee report format in all respects, but it should set out clearly the recommended decision and the reason for the decision. The report should also include a section for the decision taker to sign and date after the five clear days have expired signifying their agreement.)*

After a Key Decision has been made -

- a **statement of decision** must be issued to all Councillors by Democratic Services
(This must state who has taken the decision, what the decision is and give a statement of reasons - a blank example is attached. Democratic Services will draft the statement of decision from the recommendations and reasons contained in the report.)
- A further period of five calendar working days is allowed during which time the decision may be called in by any five Members (unless reasons of urgency determine that the decision must be implemented immediately.) Only after the call-in period has expired can the decision be implemented. This means that you may need to build in extra time to allow not only for this period, but for the possibility of a call-in. If a decision is called in it will need to be considered by a relevant PDS Committee, which may decide to refer it to the Executive for re-consideration.

Where a matter for decision qualifies as exempt/part 2, no exempt information will be disclosed to the public, but it will still be necessary for the matter to be included in the Forward Plan and for a Part 1 summary of the statement of decision to be available for the public.

* *Democratic Services Contact = Graham Walton, tel. 020 8461 7743*

**** Five clear days excluding the day the report is issued, the day the report is signed and any intervening weekends, public holidays etc**

Updated 15/8/06

LONDON BOROUGH OF BROMLEY
STATEMENT OF KEY DECISION

SUBJECT:

Notice is hereby given that the following Key Decision on the above mentioned subject has been taken by

.....

for the reason(s) set out below.

Summary of Decision:

.....
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.....
.....
.....

Reason(s) for Decision:
(to include details of any alternative options considered and rejected)

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.....
.....
.....

Mark Bowen
Director of Corporate Services

Publication Date:

Decision Ref: 2006/.....

(This decision will come into force, and may then be implemented on the expiry of 5 working days after the publication of the decision, unless it is subject to call-in.)

SUMMARY OF THE COUNCIL'S "CALL IN" REQUIREMENTS

Holding the Executive to Account

Moving to an Executive decision making model should mean that decision-making is quicker and more efficient but to ensure that decisions made are effective, the Executive and individual Portfolio Holders must be held to account.

This role involves scrutinising Executive and Portfolio Holder decisions at a number of different stages of the decision-making process: before decisions are made, before they are implemented and after they are implemented.

There are a number of ways in which the Executive can be held to account:

- ❑ Examining Executive and Portfolio Holder minutes and agendas
- ❑ Using call-in procedures
- ❑ Attending Executive and Portfolio Holder meetings
- ❑ Examining the Forward Plan of Key Decisions
- ❑ Calling the Portfolio Holder as a witness
- ❑ Meetings with Portfolio Holders
- ❑ Officer briefings

Call-in Procedure

When a decision is made by:

- ❑ the Executive,
- ❑ an individual member of the Executive,
- ❑ a Committee of the Executive or
- ❑ an officer with delegated authority from the Executive;

the decision will be published and sent to all Members of the Council normally within two working days. The decision will come into force, and may then be implemented, five working days from the date of publication.

During that five-day period the decision can be 'called-in'. This procedure allows executive decisions to be scrutinised before they are implemented - an important part of the PDS process. Requests for call-in must be submitted to the Director of Legal, Democratic and Customer Services during this five-day 'call-in' period. Requests should be made, in writing, detailing the reasons for the call-in. Each call-in needs to be supported by five Members of the Council.

The relevant PDS committee will then meet within a time period agreeable to all parties of the call-in. Having considered the decision, the PDS Committee has three options –

- (i) if it decides that the decision is correct, no further action is taken on the call-in and the decision may then be implemented;
- (ii) if it decides that the decision should be reconsidered it may refer it back to the Executive, giving its reasons. The Executive (not just a single Portfolio Holder) must reconsider the matter;
- (iii) in exceptional circumstances, if the Committee considers that the decision contradicts the Council's policy and financial framework, it can refer the matter to a full Council meeting for reconsideration.